

DT
791
G521t

GLUCKMANN

TRAGEDY OF THE ABABIR-
WAS, AND SOME
REFLECTIONS ON SIR
HERBERT SLOLEY'S
REPORT





THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA
LOS ANGELES

THE TRAGEDY

OF THE

ABABIR WAS

and some reflections on

Sir Herbert Sloley's Report.

By Emanuel Gluckmann.

Reprinted from Rand Daily Mail.

May, 1922.

PUBLISHED BY

Central News Agency, Ltd.,

JOHANNESBURG.

PRICE 1/-



THE TRAGEDY

OF THE

ABABIR WAS

and some reflections on

Sir Herbert Sloley's Report.

By Emanuel Gluckmann.

Reprinted from Rand Daily Mail.

May, 1922.

PUBLISHED BY

Central News Agency, Ltd.,

JOHANNESBURG.

PREFACE.

As it is my fixed resolve to appeal for a fair trial, not only to the Public of South Africa, but to the sense of justice of the millions overseas, it has become necessary to compile these scattered instalments of the sad history of the Ababirwas into this little volume.

I trust that such as will read, will believe in the truth of the facts which I allege. Should any of my readers desire fuller information on any facts, I shall with pleasure furnish such information.

I wish to take this opportunity to express my thanks to the Editor and the Staff of the " Rand Daily Mail " for the encouragement and assistance given by them to me.

E. Gluckmann,
Box 1744,
Johannesburg.

7th June 1922.

DT
791
G521t

The Tragedy of the Ababirwas,

By Emanuel Gluckmann.

Reprinted from Rand Daily, Mail 1922.

CHAPTER I.

A BACKWARD COUNTRY

In order to enable my readers to follow my recital of the successive events, I must commence with a short geographical and historical sketch of the Bechuanaland Protectorate and the district of Tuli Block, in so far as may be relevant to my case.

Bechuanaland is divided into two parts; the Southern portion, which was annexed to the Cape Colony on November 15, 1895, is administered as a portion of that province, and is known as British Bechuanaland; and the Northern portion, known as the British Bechuanaland Protectorate, which has its own administration, the form of government being very similar to that of Basutoland.

The Protectorate is again also divided into two parts: the Northern and the Southern British Bechuanaland Protectorate. The head of the Administration is the High Commissioner of South Africa, who legislates by proclamation, and has under him a Resident Commissioner, stationed at Mafeking, in the Union, and two Assistant Resident Commissioners, one stationed at Gaborone for the Southern Protectorate, and the other at Francistown for the Northern Protectorate. There are also several Resident Magistrates stationed at some of the important native settlements in the Protectorate, like Serowe, the capital of Chief Khama.

The Resident Commissioner is at the head of a force of police, known as the Bechuanaland Protectorate Police, numbering 173, of whom 110 are natives recruited in Basutoland. This small force has to maintain law and order in an area of about 275,000 square miles, with a population, according to the census taken on May 7, 1911, of 1,692 whites and 123,658 natives.

The Protectorate is bounded on the south and east by the Union of South Africa, on the north by Southern Rhodesia, the Zambesi and Chobe Rivers, and on the west by South-West Africa.

The country, in so far as I have seen it in my journeys from Mafeking to Palapye Road, from there to Serowe, and during my stay at Palapye Road, is a wilderness of stunted thornbush; the soil is too sandy and the rainfall too infrequent and uncertain for agricultural purposes, but the warm climate and the succulent grazing render it an ideal pastoral country. The staple product of the Protectorate is, therefore, cattle, of which the natives own immense herds.

With the advent of the diamond-drill to overcome the scarcity of water, it is a country of great possibilities, but nothing can be done without the consent of the chiefs, and they pursue consistently a policy antagonistic to development, probably to discourage a greater influx of whites into their territory. The climate is said to be delicious in winter, and I certainly experienced great heat in summer, during which season malarial fever is generally prevalent.

The means of communication are the great railway line from Capetown to the Victoria Falls, which runs right through the territory, and country roads maintained or rather not maintained in a most disgraceful state; they are nearly impassable.

POWERFUL CHIEFS

By far the larger part of the Protectorate has been apportioned as reserves among the six tribes of the Bechnanas: the Bamangwatos with Khama as the paramount chief, and Serowe, about forty miles by road from Palapye Road, as

3108336

capital; the Bakhatla, with Linchwe as chief; the Bakwena; the Bangwaketsi; the Batawana, at Lake N'Gam; and the Bamaleti.

These chiefs have great powers, which are sanctioned by law. By section 8 of the Proclamation of June 10, 1891, the jurisdiction of the Courts of the Resident Commissioner, Assistant Commissioner, or Resident Magistrate, is not allowed to extend to any matter in which natives only are concerned, unless in the opinion of the court, the exercise of such jurisdiction is necessary in the interests of peace, or for the prevention or punishment of acts of violence to person or property.

By section 10 of the same Proclamation any native chief may request to be appointed to exercise jurisdiction in native criminal and civil cases within limits to be assigned by the Resident Commissioner with the sanction and approval of the High Commissioner.

One can easily understand from the above two sections what dominion these chiefs sway over the submissive Bechuanas. It cannot be doubted that their powers are sometimes exercised despotically, in spite of the fact that the whole country is a part of the British Dominions, and that the chiefs are legally bound to use their great rights only subject to the fundamental principles of equity.

THE GREAT KHAMA

The most powerful of these chiefs is the celebrated Paramount Chief Khama.

Khama is a remarkably dignified and romantic figure. Nearly one hundred years old, his tall, spare form is still erect and capable of great exertion; his eye is undimmed, his intellect acute and vigorous. The taint of neither tobacco nor spirituous liquors ever passed those sternly repressed lips.

He is the Bismarck of South African native diplomacy in the same degree as Chaka was the Napoleon of its native military science. He has outlived all his opponents. His wonderful gifts have enabled him to withstand the encroachments of both the indomitable Matabele, and, later, the all-conquering whites. He is at all times a kingly figure, whether in his capital at Serowe, or in the audience-hall of Queen Victoria.

Khama early recognised the impossibility of maintaining complete independence against the whites; he embraced Christianity, allowed missionaries to settle in his territory, and employed their influence as well as the thunder of English artillery in preserving his unwarlike tribe from the attacks of his

two deadly enemies: the Boers and the Matabeles.

This extraordinary man exercises a tremendous, and frequently baleful, influence on the Administration of the territory; I do not attack the rectitude of its officials, but Khama, in their eyes, can do no wrong; he has to be maintained as if part of the constitution.

His native subjects tremble before him, and even the white residents in the territory stand in awe of him. No white man may own any ground or cattle or sink a well or carry on any trade or business in the Reserve without the consent of the chief, and, even then, any tenure, unless specially otherwise stated, is merely temporary, subject to the goodwill of the chief.

Prior to and during 1885, the Bechuanas carried on hostilities with the Boers of the then Transvaal Republic, until in that year, Sir Charles Warren, who was in command of an expedition sent from England to pacify Southern Bechuanaland, visited Khama and the other chiefs, with the result that a British Protectorate was proclaimed over their territories.

THE RAIDED TERRITORY

I understand that, in order the better to prevent the depredations of the Boers across the Limpopo into Bechuanaland, Khama agreed to transfer a strip of land along that river to the British South Africa Company, several miles in width, and stretching from Rhodes Drift and the circle round Fort Tuli on the east to just below Pallas Camp on the west. That stretch of land is known as Tuli Block, and, although it is, as aforesaid, the property of the British South Africa Company, it is governed by the Administration of the Bechuanaland Protectorate.

A far more serious enemy to the Bechuanas than the Boers were the warlike and restless Matabele. Until the power of the Matabele was crushed by Rhodes, the whole country, every tribe in their neighbourhood, suffered from their incursions and were forced to pay tribute in skins, cattle, elephants' tusks, and other products of the country.

Many tribes were obliged to flee from their old homes, and, among such, was the tribe of my clients, the Ababirwas, who were also laid under tribute by Moselekatsi and Lobengula, of the Matabeles.

THE TRIBE DESTROYED

I have closely examined the old men of the Ababirwas, some of whom must be well over eighty years of age, and

they all concur in stating that their tribe is an offshoot of the Bakhalaka in Rhodesia, where the main portion of the tribe is living even at this day under Chief Maare. They remember leaving Rhodesia under Chief Molava, the grandfather of the present chief, Malema, at first for Bechuanaland, where they settled down in what is now called Tuli Block.

Pressed by the Matabele they, under Makhura, the father of Malema, crossed the Limpopo and settled at Maleboch's, in the district of Pietersburg, Transvaal, where they remained until about the time of the defeat of the Matabeles by Rhodes's Volunteers, when a number of them, under their present Chief Malema, returned to their former home in Tuli Block.

They maintain that they are not Bechuanas, and have little in common with Khama's subjects, whose language and customs differ considerably from theirs.

At no time during their history did the Ababirwas actually recognise the suzerainty of Khama, and never paid him any tribute, except for two years, when, shortly after their return to Tuli Block, Khama sent to them his brother, Kebaitete, who informed them that the land had been annexed by Queen Victoria, and that he had been authorised by the English to collect tax from them.

Kebaitete urged the Ababirwas to leave Tuli Block for the Bamangwato reserve, pointing out that the handful of them would not be able to make head against the depredations of the Transvaal Boers. He was so far successful that a portion of the tribe broke away, crossed into the Bamangwato reserve, where they, as Khama's subjects, founded a kraal under the name of Bobonong.

My informants remember being visited by Sir Goold Adams, who treated them with great kindness, and confirmed them in the possession of their lands.

They were ordered to pay a ground-rent of 10s. per annum and a tax of £1 for every wife a man married.

During practically three decades of peace, the Ababirwas prospered and amassed considerable possessions. Their grazing lands were covered with numerous herds of cattle and goats; they gathered abundant harvests of mealies and corn off their fields; their hunters brought home the pelts of the lion and tiger, which the women fashioned into karosses; the countryside smiled with peace and plenty. On December 24, 1920, Modisa-o-Tsile, the son-in-law of

Khama, at the head of a large force of well-armed men, surprised the kraals, looted them, burnt the huts, and led the whole population away into captivity to Bobonong, where they have been ever since.

CHAPTER II.

THE STORY OF THE ATTACK THE TRIBE ORDERED TO LEAVE

In the winter of the year 1920 two emissaries from Khama, Mabusha and Ramulele, arrived at the kraals of the Ababirwas with the Chief's command that the Ababirwas were to abandon their homes and were to join their kinsmen at Bobonong in his reserve. The Ababirwas sent back a defiant refusal.

Some months later, Captain Garbutt, whom I believe to be at present the Resident Magistrate of Selika Kop, in Tuli Block, visited the Ababirwas. He told the natives that they had to move from Tuli Block and urged them to carry out Khama's order, as otherwise, should they move elsewhere out of the Protectorate, they would have to leave their cattle behind them, no permit being obtainable to remove cattle from the reserve except for slaughtering purposes.

Malema was at the time in the Transvaal, where he had gone to consult a doctor about his son. The Ababirwas replied that they could do nothing in the absence of their Chief, and pointed out that they had already ploughed their lands and that their tax and rent had been paid until the end of that year.

Khama decided to adopt sterner measures.

KHAMA'S TROOPS ARRIVE

On the eve of Christmas, 1920, a large force of Khama's Mazabas, kilted soldiers, was reported to be marching to Tuli Block on the way from Bobonong. The villagers speculated with considerable anxiety as to its destination and intentions, but any doubts they may have entertained were soon to be dispelled.

The column numbered over five hundred men; they were fully armed with rifles, kerries and assegais, and had in their rear a train of thirty-two wagons. The force was under the command of Modisa-o-Tsile, son-in-law of Khama, and headman of Bobonong.

The regiment halted at the police station, a very short distance from and in full view of the Ababirwa kraals, where they were welcomed by Sergeant Whittlesea, the officer in charge of the

station, on behalf of the Administration of the Protectorate.

Messengers were sent out soon after to assemble the Ababirwas in front of the police station.

Modisa-o-Tsile announced to the crowd that he had been sent by Chief Khama to escort them to Bobonong. The Ababirwas argued that they could not leave, as Chief Malema had not yet returned from the Transvaal, and their crops were already considerably advanced in growth.

HORRORS OF THE ATTACK

At the command of their leader, the soldiers attacked the unarmed Ababirwas; one, Koma Matima, had his face smashed in with the blow of a kerrie; Mokale, Masila, Patchwani, Mukupani, and a number of others were severely beaten. The Ababirwas broke and fled with the soldiers in pursuit.

Scenes ensued which usually accompany the sack of a hostile settlement by a licentious soldiery. A number of the Ababirwas succeeded in escaping across the Limpopo into the Transvaal. Some, intercepted on the way, were arrested and brought back to swell the crowd of the trembling captives. A woman was heard near the river uttering scream after scream; she has not been seen or heard of since. A man and his wife were captured; the man was bound and laid close to a large fire, his yells causing roars of amusement among his tormentors. A woman was seen running pursued by two soldiers; her fate is unknown until this day.

The regiment camped close to the kraal of Matima, a headman of the Ababirwas. The soldiers, without stint, slaughtered such of the animals of the Ababirwas as they required for provender. The population was kept under close surveillance.

LOOTING AND BURNING

In the morning the impi commenced its task of evicting the Ababirwas from Tuli Block. The kraals were looted, such of the possessions of the Ababirwas as seemed to their captors to be useful or decorative being flung on the wagons; floors of the huts were dug up in search of buried valuables and £1,640 was found in the hut of Malema. Goats, pigs and poultry suffered indiscriminate slaughter. The huts were set on fire, and the flames consumed the remaining possessions of the Ababirwas, a large quantity of furniture, tools, karosses, corn and other assets which represent riches to the native being destroyed.

Some terrible scenes must have been witnessed. I have been told of a sick woman having been left in a hut which was set on fire; her husband rushed into the flames and succeeded in carrying her out; she died soon after.

CARRIED INTO SLAVERY HORRORS OF A SIX DAYS' MARCH

The night, lit by the conflagration of the burning kraals, passed, and, at sunrise, the captured Ababirwas were formed into line of march. The men were in front with the cattle, their last remaining possession; the women, children and infirm were behind. No one able to walk was allowed a seat on the wagons laden with the loot of the previous day. The blind were led by the hand; children were carried on their mothers' backs. Along each side of the column soldiers marched, assaulting and swearing at any straggler who happened to drop out of the ranks, even if it were for the most essential purpose. A woman bore a child on the road; soldiers surrounded her and urged her to be "quick about it"; as soon as the child was born she was made to fall into line carrying the newly-born babe.

No food was given to the slaves, who had to subsist on the little corn they had saved from the fire, and the wild roots, berries and vegetables of the veld, and that notwithstanding the fact that their captors were slaughtering the cattle of the Ababirwas for their own consumption. Water, on the march, was sold by the soldiers at 2s. 6d. a tin.

WOMEN OUTRAGED

Women and girls were insulted and manhandled. In the night the men were segregated from their mothers, wives and daughters. The women were laid out in rows and brutally violated, night after night, no respect being paid to age, no consideration given to tender years.

The march lasted six days and six nights, the last night being spent in the outskirts of Bobonong.

At Bobonong, Modisa-o-Tsile and his army were met with the beating of drums, firing of rifles, shouts of triumph, and other manifestations of a barbaric victory. The captured population was led to the Kghotla, Council-house, where Modisa-o-Tsile delivered to them and his subjects a long harangue, the substance of which was to the effect that the Ababirwas must renounce Malema, that Khama was the greatest king in the world, and that the Ababirwas should shift for themselves as best they could. A few of the unfortunates found refuge with kinsmen they had at

Bobonong; others camped on the open veld outside of the kraal.

For about two months they were kept in the graveyard with a guard over them. The guard was in reality superfluous, as the natives had nowhere to go to, and were bound to the place of their captivity by their inability to obtain passes to remove their cattle and by the lack of transport for their families.

TREATED AS SLAVES

The rest of the history of their stay at Bobonong is on a par with what preceded.

None of their possessions was given back to them, and, except for their cattle, they have absolutely nothing. Even their cattle they are being deprived of by frequent and heavy fines and exactions. They are forced to work for Modisa-o-Tsile, erecting kraals, building huts, ploughing fields, men, women and children, without pay, without food, without hope. They subsist on wild roots and vegetables.

Many were beaten and flogged, some tortured in a horrible and fantastic manner. One man was punished by being made to stand in the sun for seven days, from sunrise, till noon, from 3 p.m. till sunset. Malema's brother was captured, flogged and brought to the kraal; he, with a number of other Ababirwas, were bound to stakes during a whole night; fires were lighted close to the prisoners, some of them fainting on account of the excess of their agony.

The names of the natives so tortured are: Mabusha, Makhura, Mishukwana, Sitachwa, Patani and Mutola. The originator of this form of sport was Zitlamu, the son of Modisa-o-Tsile.

THE CHIEF BEATEN

Malema received the news of the disaster while still in the Transvaal, and immediately set out for his kraal. On crossing the Limpopo, the Chief passed the night among the ruins of his former home. During the night he and a friend, who accompanied him, were surprised by a party of Khama's soldiers, brutally beaten, bound, and driven to Bobonong; no food was given them on the way.

On arriving at the kraal they were again beaten, and then told to shift with the rest of the captive population. There the Chief remained until he received news of the arrival of the men sent by me to Tuli Block to gather information, whom, after escaping in the night, he joined.

Some of the fugitives ventured to return to Tuli Block and rebuild their

huts, partly for the purpose of looking after and gathering the crops which had been sown, but, in the month of May, 1921, another expedition was sent from Bobonong, which destroyed the huts and dispersed those last remnants of the Ababirwa tribe.

CHAPTER III.

I was consulted on the Ababirwa case in June, 1921.

From the commencement, I was confronted with the difficulty that there was no court in the Protectorate which had jurisdiction in a dispute between native chiefs. I have already in my first chapter referred to sections 8 and 10 of the Proclamation of 1891; section 8 excludes the jurisdiction of the ordinary Courts in native cases, except when necessary for the preservation of peace, or for the prevention or punishment of acts of violence, but, as the present claim was one for damages, it fell within none of those categories. Section 10 endows native chiefs with limited jurisdiction over their subjects, but the Ababirwas denied that they were Khama's subjects, and, in any case, Khama could not sit as a judge in his own quarrel.

EVIDENCE OBTAINED

I had several consultations on the subject with Mr. Saul Solomon, K.C. He confirmed my opinion that no court in the Protectorate possessed the necessary jurisdiction, and advised a petition to the High Commissioner for the appointment of a special tribunal; he strongly urged me, at the same time, to send a reliable man, before presenting the petition, to the scene of the outrage to investigate the correctness of the facts alleged by the natives. Accordingly, Mr. Susser, an attorney in my office, and Mr. Baxt, an experienced photographer, accompanied Malema's messenger on his return to Tuli Block.

On the banks of the Limpopo, Mr. Susser met a number of the Ababirwa fugitives, and succeeded in communicating the fact of his arrival to Malema, then a prisoner at Bobonong; the chief escaped in the night, and joined my men a few days later.

The expedition returned to Johannesburg with statements and photographs, which placed the information received by me beyond doubt. Among others, they met Sergeant Whittlesea, who frankly corroborated the reports given by the natives of the raid, but added in extenuation that Modisa-o-Tsile, before commencing the attack, delivered to him the instructions of the Administration to assist him and his men in evicting the Ababirwas.

The fact that the Administration was alleged to have authorised the removal of the natives before the expiration of the year for which they had, admittedly, paid their hut-tax, complicated a case already more than difficult, and I decided to retain Mr. Advocate Blackwell to assist Mr. Solomon. I again consulted counsel on the question of jurisdiction, and they unhesitatingly decided that the ordinary courts of the Protectorate had no jurisdiction, and that my only remedy was to petition His Royal Highness to appoint a special court. I acted on the advice of counsel.

THE ABABIRWA CATTLE

As a deposit for the costs, Malema could offer me only a herd of his cattle, which was then at Pepe, about forty miles from Palapye Road, over which, however, Khama had much more control than Malema. After making enquiries at Mafeking and Vryburg, I decided to send a white man to Palapye Road accompanied by Malema, to endeavour to obtain possession of the cattle. It was then that, for the first time, I encountered the forces of the Administration of the Protectorate.

Early in August, 1921, my man reported to me from Palapye Road that he found the cattle, that, according to the regulations in the Protectorate, they could be removed from the reserve only by rail for slaughter, that he had obtained a permit from the Veterinary Department at Mafeking to rail four hundred head from Palapye Road to Johannesburg, but that, on the previous Saturday, Mr. Chase, the Chief Veterinary Officer, had arrived at Palapye Road from Serowe, when he informed him that Chief Khama claimed the cattle on behalf of various natives in his territory and that, under the circumstances, the export permit must be suspended.

I was and still am puzzled to understand how the Veterinary Officer could be concerned with questions of ownership, and requested my agents at Mafeking to communicate with Mr. Chase. They replied to me on August 9, 1921, that they had seen Mr. Chase, who stated that the permit issued by his department was to rail four hundred head from Palapye Road to Johannesburg, and did not affect the question of their removal from their grazing grounds to Palapye Road for the purpose of being railed; he added that about four-fifths of the cattle were in quarantine for lung-sickness and would not be released for six weeks, and, even then, only if evidence would be forthcoming to prove Malema to be their owner. I enquired

how many cattle were being claimed. Khama, and requested that the claimants should be called on to institute actions for such cattle as they alleged were their property, and received the reply that Khama maintained that none of the cattle belonged to Malema. Here it will be convenient to state that no claim was ever instituted by anyone, that Khama admits that his claim, advanced and dropped for some reason best known to himself, was unfounded, and the cattle are now, beyond all dispute, the property of Malema.

THE CATTLE DRIVEN AWAY

As the quarantine period was to last until September 20, 1921, I recalled my man, but advised Malema to remain in the vicinity and report developments. On September 13, 1921, a week before the expiry of the quarantine period, he wired to me that the herd was being driven to Palapye Road, as I subsequently ascertained, by Modisa-o-Tsile. I immediately demanded of Mafeking an explanation, how it was that the cattle were in quarantine only when I wanted to move them, and received a reply, dated the 20th of that month, that I was at liberty to move the cattle.

Fondly imagining that no further difficulties of a technical nature would be raised, I again made arrangements to truck the cattle, when a permit was again refused by the Veterinary Department pending the production of proof of ownership, but, after more correspondence, that demand was dropped, and I trucked to Johannesburg sixty oxen. Unfortunately, the prices realised by me were so low that I did not feel justified in sacrificing the natives' stock, and discontinued trucking.

On October 29, 1921, the Chief Veterinary Officer wired to me to make my own arrangements for feeding and watering the cattle, but, on November 7, 1921, I received a letter from the same official again raising the question of ownership.

I then received a letter, dated November 29, 1921, from the Assistant Resident Magistrate of Serowe, written evidently on behalf of Chief Khama, requesting me to remove the cattle from his reserve, and, at the beginning of the following month, I again sent Mr. Susser to the Protectorate.

The larger portion of the cattle consisted of breeding stock and young bullocks and heifers, and it was impossible to truck them to Johannesburg without heavy financial loss. Mr. Susser accordingly arranged with Chief Khama at Serowe, in the presence of the Resident

CHAPTER IV.

Magistrate and Assistant Resident Magistrate, that a public sale of the cattle should be held at Palapye Road in January, 1922.

On December 3, 1921, a further letter was received from the Veterinary Department demanding proof of ownership.

SALE PREVENTED

On Mr. Susser's return, the sale was arranged to be held on January 23, 1922, and was widely advertised; the Veterinary Department at Mafeking was duly advised, and the date, as a matter of fact, was fixed at the request of the Assistant Resident Magistrate at Serowe, who had kindly consented to act as auctioneer, which consent, however, he withdrew a few days before the sale owing to the sale not being judicial.

I engaged an auctioneer, Mr. Fleming of Mafeking, and accompanied him and an assistant to Palapye Road to attend at the auction. There we were informed that the consent of the Resident Commissioner was necessary to hold a sale by auction; the auctioneer wired to him for permission, which was refused on the ground that Malema was not justified in disposing of his cattle for the purpose of raising funds for his action, and no sale was held.

The cattle are still where they were in January, 1922. Malema is thus, through the action of the Administration, deprived not only of the necessary funds to fight his case, but is actually without means of subsistence.

I have little to add except that, on February 22, 1922, I received a letter from my Mafeking agent to the effect that the Resident Commissioner had advised him that Khama feared that the cattle would die of the prevailing drought, and that the chief considered the removal of the cattle from his reserve imperative. Partly in despair and partly in fun, I replied pointing out that the only solution out of the difficulty seemed to be for Khama himself to purchase the herd. The Administration took up the proposal seriously, obviously considering it to be an excellent opportunity for settling the trouble, and wrote to my agent that, if Malema would guarantee to withdraw all proceedings against the chief, they had no doubt that Khama might be induced to pay a fair price for the cattle, probably a better price than Malema could obtain in the open market. They pointed out that they had no authority for saying that, but they believed that Khama could be induced to do so.

SPECIAL COURT REQUESTED

Malema's petition to the High Commissioner is dated October 14, 1921.

The petition contained a summary of the facts, my client's anxiety to institute action for redress and for the vindication of the rights of himself and his tribesmen, that I had been advised by eminent counsel that the Bechuanaland courts did not possess the necessary jurisdiction, and entreated an audience at which my client and his counsel could petition His Royal Highness for the appointment of a special court.

An acknowledgment was received by me from the Acting Imperial Secretary dated November 1, 1921, in which I was advised that the High Commissioner was consulting the Administration of the Bechuanaland Protectorate on the subject.

On November 18, 1921, the Acting Imperial Secretary communicated to me the High Commissioner's decision on my client's petition with the information that His Royal Highness had received from the Resident Commissioner of Bechuanaland full reports on the various matters mentioned in the petition.

THE OFFICIAL STORY

For the proper understanding of the attitude taken up by that high authority on the question in issue, it is advisable that I should give the verbatim report by the Resident Commissioner to the High Commissioner as contained in that letter:—

"Malema is a sub-headman of the Mabitwa tribe with a very small following.

"The Mabitwa tribe, which has always paid tribute to the Chief Khama and is understood to have come originally from Bobonon in the Bamangwato Reserve, has been living on the Tuli Block for some years as tenants-at-will of the British South Africa Company, to whom they have been paying rent, not tax as stated in your letter of October 14. Last year, however, the Administration received a notification from the company to the effect that they required the land on which the Mabitwa were living, and Khama at the request of the Resident Commissioner agreed to invite the Mabitwa to return to the Bamangwato Reserve. Some of them accepted the chief's invitation and are there now; others, including, Malema, did not, but all were free to accept or decline.

"In addition to the above summary of events the following details have been reported:

"In June, 1920, the Mafirwa in the Tuli Block requested Khama's permission to return to Bobonon in the Bamangwato Reserve, and Modisa-o-Tsile was sent to tell them that they might do so.

"In October, 1920, the Assistant Resident Magistrate in the Tuli Block interviewed the Mafirwa regarding the British South Africa Company's notice to quit, and found the tribe, except Malima, was not present and his followers were not prepared to say what their intentions were as regards future settlement. They were not adverse to going to the Bamangwato Reserve, but they complained that Modisa-o-Tsile ill-treated them. He advised them to send a deputation to Serowe to tell Khama their grievance. He (the Assistant Resident Magistrate) states, however, that he has received no complaints of the acts of violence alleged in your letter to have been done to the Mafirwa and their property by Modisa-o-Tsile and others. No such reports have reached the Administration.

THE OTHER VERSION OF THE REMOVAL

"In December, 1920, Khama sent a regiment with wagons, etc., to assist the Mafirwa to move from the Tuli Block, and after everything had been moved out of the village the huts were burnt by the Mafirwa themselves according to native custom as the local magistrate has been told.

"The majority of the Mafirwa came to the magistrate's office at Serowe in April last and, on being asked whether they wished to remain in Khama's country, replied affirmatively. Malima and his followers were not present at this meeting.

"The majority of the Mafirwa are now living at Bobonon and appear to be satisfied. A statement made by five of them before the magistrate on October 26 is attached.

"Khama has not touched any of the assets of the Mafirwa and he is anxious for them to settle down and prosper. He has himself suggested that when next the Resident Commissioner is in the locality the Mafirwa should be called to see him and be given an opportunity of placing before the Resident Commissioner any grievances which they may have, and also that Modisa-o-Tsile should be present to answer any charge brought against him. With regard to the desire of Malema to institute a civil action against Khama I am to state that, if such is still his intention, the Resident Commissioner is advised that the Court of Assistant Commissioner constituted

by Proclamation No. 2 of 1896, has the necessary jurisdiction and is the proper court to deal with the case, and that the jurisdiction of the court is not definitely ousted by the provisions of sections 8 and 9 of the Proclamation of June 10, 1891, and section 1 of Proclamation No. 2 of 1896, but is discretionary on the part of the court."

Proclamation No. 2 of 1896 did not affect the jurisdiction of the ordinary courts of the Protectorate in so far as natives were concerned, the jurisdiction being specially restricted by section 1 within the limits of sections 8 and 10 of the Proclamation of 1891.

A REMARKABLE STATEMENT

The statement obtained by the Resident Magistrate of Serowe, Captain Nettleton, a copy of which was annexed to the High Commissioner's letter, is of so startling a nature as to deserve being bodily included in this report:—

"Five Mafirwa, viz., Makgosa, Tshoto, Thatedi, Sekape and Talane appeared before me on the 26th instant and state as follows:—

"We left Tuli Block and came over to the Bamangwato Reserve in December, 1920; we obtained Khama's permission to come over.

"Some Mafirwa under Headman Modisa-o-Tsile burnt our huts at Tuli Block after our property had been removed. Malema was not there at the time. Our property was not looted and our cattle were not taken.

"Our wives and children were not captured. Some of the men and women ran away. We were not beaten. One man was beaten by other Mafirwa because he suggested that the men go and live at Bobonon and the women be left at Tuli Block.

"We had proper food at Bobonon. The men and women who ran away are still away so far as we know.

"We are living at peace with Khama and our cattle are at Leupane but do not belong to us now because Malema has pledged them to lawyers at Johannesburg.

"Malema was not captured by Khama's men and was not flogged as far as we know. He ran away to the Transvaal.

"We did not instruct Malema to bring a case against Chief Khama.

"Malema is one of the Mafirwa headmen. Khama is our chief and has never ill-treated us, and we are quite satisfied to remain with him.

"We did not instruct Malema to take any action against Khama. Khama is our chief, not Malema.

"We asked Khama for permission to come over and he consented. We are afraid of Modisa-o-Tsile. Khama is a just man.

"It is all lies about us starving. Khama is feeding us with grain and meat.

"We thought at one time that we might be allowed to remain at Tuli Block.

"We look to our Chief Khama to assist us and wish to remain with him."

WEAK SPOTS IN THE OFFICIAL STORY

I realised that the report by the Resident Commissioner, and, in particular, the statement obtained by Captain Nettleton from the five Ababirwas was totally inconsistent with all the circumstances of the case as reported to me by my clients, particularly as some of the Ababirwas who were alleged to have made a statement to Captain Nettleton had already been interviewed by my man when at Tuli Block, and had given a totally different version.

Until this day I have not been able to see the least justification for the High Commissioner's decision on the question of the jurisdiction. I regard the decision as not only wrong in law but as ironically curious in that it appointed as arbiter one of the officials of an Administration in a case in which at least some portion of the blame seemed, *prima facie*, to attach to the officials of that Administration.

The conclusion came to by the High Commissioner on the facts reported is as strikingly illogical and speaks volumes for the credulity of his department. It is clear from the report received by him that the British South Africa Company, the Administration of the Protectorate and Khama desired the Ababirwas to remove from Tuli Block to the Bamangwato Reserve, but no reason is given, nor evidently sought, why the Ababirwas should desire to leave their homes where they had been living for over forty years without making any complaints, to leave their crops unreaped, beg for permission to move to the kraal of the man who, as they alleged, ill-treated them, why it was necessary to send a "regiment" to assist them to move from Tuli Block, and why so many of the Ababirwas should be complaining to me of ill-usage.

The High Commissioner seems to have become convinced of the falsity of the complaints advanced, by the statement obtained from the five Ababirwas by the magistrate of Serowe on October 26,

1921, although that document bristles with inconsistencies. For instance, it contains an allegation that Khama was feeding the declarants with grain and meat; it can reasonably be assumed that that statement meant that Khama was supplying food not only to the declarants but to all of the Ababirwas.

AGAIN: WHY?

Could anyone imagine anything more unlikely? If the other allegations be true that the Ababirwas had not been ill-treated, that their property had not been looted and that they had come to Bobonong of their own free will, what obligation was there on Khama to feed the Ababirwas?

Again, the declarants assert that they were not beaten, but that one man was beaten because he had suggested that the men should go and live at Bobonong and the women be left at Tuli Block. Why such a suggestion if the Ababirwas left Tuli Block of their own free will, nay, were so anxious to leave for Bobonong as to seek Khama's permission?

Furthermore, if their property was not looted and their cattle not taken, where were the possessions of the Ababirwas, why should they require to live on Khama's bounty? If they were treated well why should some of the men and the women run away? At the end there is an allegation that the declarants were afraid of Modisa-o-Tsile; surely, it is most strange that under the circumstances the High Commissioner should believe that the Ababirwas at Bobonong were thoroughly satisfied.

To me the document appeared not only unconvincing but actually false, and the only conclusion I could come to was that the five Ababirwas had been terrified or bribed into betraying the cause of their tribesmen, and that the Magistrate had been duped. I had, however, no option, and, on counsel's advice, as a test case, instituted action for damages on behalf of Malema against Khama and Modisa-o-Tsile in the court of the Assistant Resident Commissioner. The summons was duly served on both of the defendants; up to now no plea has been served in reply.

That action was interrupted by a sensational turn of events.

When at Palapye Road in the latter half of January, 1922, I made use of the occasion to obtain the statements of a number of Ababirwas who had come to consult me on the progress of the case. The statement of the five Ababirwas obtained by the magistrate of Serowe occurred to my memory and, quite

casually, I asked my interpreter whether any one of the assembled Ababirwas knew of the whereabouts of the five men in question.

To my utter surprise, I received a reply that the five were in the crowd who were squatting on the grass outside my door. I immediately called them in and questioned them on their recollection of their interview with Captain Nettleton; they all remembered the occasion distinctly. It appeared that there were not five but six; Ubudizi, Khama's grandson, acted as interpreter. These natives denied that they made the statements attributed to them in the report sent to the High Commissioner; on the contrary, they alleged that what they did state was to the very opposite effect.

STATEMENTS DENIED

I then obtained from the six natives sworn statements in which they alleged that they had informed the Magistrate of the main facts set out in Chapter II. of this pamphlet; that their chief was Malema and not Khama; that it was their wish to share the fortunes of Malema; that Khama had never been their chief; that during their stay at Serowe there were distributed to the thirty of them who had been summoned to Serowe three bags of mealies and one bag of mealie meal as rations during the three months of their stay; that the four bags lasted them only into the second week; that they were starving; that when they informed Khama that they were hungry he replied that he had nothing to do with them and sent them to their lawyers.

I took the declarants to Mr. Hill, a justice of the peace and the veterinary officer stationed at Palapye Road. The affidavit was carefully read over and interpreted to them by Mr. Rundall, Mr. Hill's assistant, an expert in the native language; the natives unanimously swore to their statements in the affidavit drawn by me and affixed their crosses and thumb-prints.

I was placed in an extremely awkward position by this unexpected discovery. What was there for me to do? I happened to be informed at that time that Captain Hannay, a man highly spoken of, was succeeding to the position of Resident Magistrate. I decided to ask for an interview with Captain Hannay, explain to him my difficulty, and suggest that an amicable settlement be arrived at between the parties.

I sent a telegram to my Mafeking agent, and instructed him to arrange an appointment, and, the same night, left by goods train for Mafeking.

The meeting between myself and Captain Hannay took place on the following day in the afternoon; my agent, Mr. Rice, and the Chief Veterinary Officer, Mr. Chase, were present. To my surprise, as soon as I commenced speaking, I saw Mr. Chase taking notes of the interview, but the significance of his action did not strike me at the time.

SETTLEMENT PROPOSED

I commenced the interview by stating that I desired it to take place without prejudice to either of the litigating parties. I explained to Captain Hannay that I had come as a suppliant, related to him the nature of my difficulty, and asked him to act as an intermediary in an attempt to effect a reasonable settlement with Chief Khama. Captain Hannay asked me what settlement I proposed, when I suggested that Khama should allow such of the Ababirwas as desired to follow Malema, to depart, and should pay them such compensation as would enable them to start anew in another territory; I suggested that I might be able to induce the Native Affairs Department of the Transvaal to give them some ground to live on. Captain Hannay asked what amount I should suggest as compensation, and a discussion ensued between all present as to the amount required by the natives to enable them to make a livelihood, which discussion I concluded by stating that I was quite agreeable to leave the question of the amount of compensation and the form it was to take, to the Native Affairs Department of the Transvaal. Before I left, Captain Hannay informed me that he considered my suggestion to be a very reasonable one, and that he would approach the Resident Commissioner for permission to discuss the matter with Chief Khama.

I left for Johannesburg with high hopes of an early settlement.

FURTHER OBSTACLES

My hopes were, however, short-lived. On my return to Johannesburg I found a letter dated January 20, 1922, from my Mafeking correspondent, in which he advised me that the Resident Commissioner, Mr. MacGregor, had had an interview with him that morning on the subject of Malema vs. Khama, during which he, inter alia, hinted to my agent that, in the report which he intended to send to the High Commissioner he would raise the question whether Malema was domiciled in the Protectorate at that date or in some other territory as, should he be domiciled outside the Protectorate, the question of security for costs would arise and that he would also have to re-

port on the plaintiff's financial position. My agent went on to say:—

"I gather from what the Resident Commissioner states that the Imperial Government would be financing Khama and in view of the plaintiff losing his case, costs could not be recovered. There is no wish on the part of the Resident Commissioner to put obstacles in the way or to delay matters, but he states that he himself will be asked these questions, and he would like to be in a position of being fore-armed in the matter."

On January 31, 1922, Mr. MacGregor, the Resident Commissioner, wrote a letter to my Mafeking agent couched in the most hostile and uncompromising terms; the letter commenced with a threat that Captain Nettleton would, no doubt, commence an action for damages against me for the very gross personal slander which I was alleged to have uttered against him; the Resident Commissioner describes my accusation against Captain Nettleton—which was really an accusation not by me but by the combination of circumstances which were revealed with regard to the statement obtained by me from the six Ababirwas—as a misstatement, and went on to accuse me of having made various other misstatements at the interview with Captain Hannay. With the utmost naivete, Mr. MacGregor concluded his letter by offering himself as arbitrator in the dispute between the two chiefs.

THE DEMAND FOR SECURITY

I replied to the Resident Commissioner on February 3, 1922, confessing my difficulty in understanding and appreciating the circumstances which had led him to intimate to my agent that it was the intention of the Administration to require Malema to furnish security for costs in connection with his action against Khama, pointing out that he, the Resident Commissioner, under the constitution of the Protectorate, would ultimately sit as a Court of Appeal from any decision of the Assistant Commissioner and that it was something new that a gentleman holding judicial office should so identify himself with one of the parties of the case which would, in the ordinary course, come before him, as to intimate that a demand for security for costs would be made. I pointed out that no such demand had been received from Khama himself, that Malema was undoubtedly an incola of the Protectorate and had been a fugitive by the alleged actions of Khama. I expressed my astonishment at the intimation that the Administration of the Protectorate was behind Khama in the action, and

added that my confidence in the justice and impartiality of the Administration had been greatly shaken by that allegation. With regard to the threat of proceedings for damages, I wrote that such threat would not silence me in the future, as the fear of it had not silenced me in the past, and I proceeded to place on record the interview between Captain Hannay and myself of January 23, 1922. I concluded my letter with a protest against the doubts thrown by the Resident Commissioner on the accuracy of my statements to Captain Hannay, before a proper investigation into the affair of Captain Nettleton had been held, and that I was certainly not prepared to advise my client to consider the Resident Commissioner in the office of arbitrator, for a moment.

Before posting the letter to the Resident Commissioner, I took the precaution to submit it for correction to my agent at Mafeking to enable him to check the correctness of my allegations with regard to the interview between him and the Resident Commissioner of January 20, 1922, and of the interview between Captain Hannay and myself of the 23rd of that month. My agent replied suggesting a few minor corrections, which were duly made, and the letter was posted to the Resident Commissioner on February 8, 1922.

NO LEGAL STATUS

On the 11th following, the Resident Commissioner replied to my Mafeking agent stating that he was not prepared to take cognizance of my letter, as I had no legal status in the Protectorate, and asking him, as a member of the Side Bar of the Protectorate, whether he identified himself with the facts contained in my letter which were within his personal knowledge, to which my agent replied on the same day in the affirmative.

On February 14, the Resident Commissioner again wrote to my Mafeking agent, again accusing me of misstatements and stating that he would retain my letter of February 8 "unless it is specifically withdrawn with suitable apologies for the misstatements contained in it." I at no time expressed any desire to withdraw the letter. I could not and cannot understand how the question of my, and my agent's habits of prevarication could be relevant in a most serious allegation which was being made by the five natives.

Annexed to the Resident Commissioner's report was a copy of the notes taken in long-hand by Mr. Chase at my

interview with Captain Hannay. I do not for a minute suspect that Mr. Chase was to blame for the undoubted inaccuracies which they contained; Mr. Chase had been placed by Mr. MacGregor in a false position, as one could not expect one of the participants in the discussion, a man probably not accustomed to the making of verbatim notes of conversation, to make a faithful record of such conversation. In my opinion, those notes should not have been taken, and, in any case, as it was intended to make use of such notes, in justice to me and Mr. Rice, my Mafeking agent, they should have been read over to me at the end of the conversation.

A "RED HERRING"

The only solution I could come to of the motives which actuated the Resident Commissioner, was that he was trying to draw a red herring across the trail of the investigation in the matter of Captain Nettleton's report, and, by casting an accusation against my honour as practitioner and my veracity as a man, to raise the belief that the affidavit had been manufactured in a conspiracy between myself and the six natives; I could think of no other motive.

I therefore replied to my Mafeking agent, sending him a copy of that letter for transmission to the Resident Commissioner, placing on record my suspicion of the sinister purpose which actuated that irrelevant correspondence and that I was again approaching the High Commissioner for the appointment of a special tribunal.

CHAPTER V.

My letter to His Royal Highness is dated February 17, 1922.

I advised him of the fact that action had been instituted, as suggested by him, but that I had not yet received the defendant's plea, and that, since the institution of such action, certain events had occurred which raised very strong doubt in my mind as to the impartiality of the courts of the Protectorate, as they had created the impression that all the forces of the officialdom in the Protectorate were being used to thwart and defeat Malema in his proposed action.

I went on to say that my only desire was to secure an impartial and early enquiry into the facts alleged by my client, and that if, after such enquiry, his charges were found to be baseless, he and I would be satisfied, but urged that, under the British Flag, we were entitled to nothing less than that. I recalled to his recollection the statement obtained from the five Ababirwas by the Resident

Magistrate at Serowe, and referred him to the affidavit which I had obtained from the same natives.

In further support of my assertions, I stated that the officialdom was prejudiced against me, and I explained the difficulties which I had with regard to the realisation of the cattle, practically in the same manner as recounted herein before, and concluded my letter with the suggestion that the matter be left to the arbitration of any advocate of standing in the Transvaal to be nominated by His Royal Highness, or to the decision of any impartial tribunal.

INQUIRY ORDERED

After some correspondence, I finally received a letter from the Imperial Secretary informing me that the High Commissioner had decided to appoint Sir Herbert Sloley, K.C.M.G., to hold an enquiry in the case, and to report to him, and intimated that Sir Herbert would have the discretion to allow the parties to be represented by counsel or attorney or not. The letter contained a severe censure on the accusations levelled by me against the officialdom of the Administration, which, it stated, were entirely unfounded. Naturally, no reasons were given for that conclusion.

I was fast getting past the stage of being surprised, yet I could not help a slight feeling of wonderment how the High Commissioner could justify to himself his condemnation of me without having held a departmental enquiry at which I and the six Ababirwas were given an opportunity to be present.

The provision with regard to the representation impressed me unfavourably, but, when a few days later I received a copy of the Proclamation promulgating the Commission, and found that it contained no provision for any such discretion, I naturally took it for granted that the High Commissioner himself realised the inadvisability of allowing barbarians to conduct their case, and that the parties would be given the right of representation.

I wrote to the Imperial Secretary stating that I was advising Malema of the date of the hearing of the enquiry, and expressing my regret that so little time, practically only fourteen days, was given to me to gather the witnesses. I then left for Palapye Road with Malema.

The inquiry was set down for Tuesday, April 11, 1922.

I arrived at Palapye Road on the Friday previous, in the evening. During the following Saturday, Sunday and Monday, I was busy morning, noon and

night, taking statements from the Ababirwas who had assembled to meet me. It was a slow process, as none of them could speak English, and I was obliged to speak to them through interpreters. I employed as interpreters two Basuto policemen, Moshesh and William, who were stationed at Palapye Road. I was very careful to impress on each one of the Ababirwas the absolute necessity of telling me the plain truth. I pointed out to them that their safety lay in telling a consistent story and, in view of their large number, they could do so only if they strictly adhered to the correct facts, as otherwise, their versions would be bound to differ. The facts given by them to me are set out in this report, and I am convinced that they are in no way exaggerated.

A STRONG CASE

When I concluded taking their statements, I realised that I had an overwhelming and irrefutable case. I could not pick a hole in the evidence of my witnesses. It was one of those rare cases which cause one to wonder what possible reply, what justification, the other side could bring forward. I realised that Khama and his adherents knew well the charges I should bring forward on the following day. I knew that they would use all measures to mitigate the enormity of their crimes to the Commissioner, and it occurred to me that they might object to my representing the natives and so leave the conduct of the case in inexperienced native hands.

I assembled the Ababirwas and acquainted them with my fear that the Commissioner might refuse them the right of representation, in which case I feared that the inquiry would not be as complete as I desired it to be. I informed them that the pending inquiry might be their last chance of stating their grievances, and that I should prefer no inquiry rather than an incomplete inquiry. The natives unanimously decided that they would refuse to give evidence before the Commissioner should my fears be realised.

The Commissioner arrived on Monday evening. I did not obtrude myself on him, although I expected to be requested to see him to discuss the following day's procedure. He must have been made acquainted of my presence, for Lieut. Nettleton, son of the ex-Magistrate of Serowe, who, as I understood, accompanied him from Mafeking, was brought to my room by the hotel-keeper and was introduced to me.

The Lieutenant informed me that Sir Herbert was anxious to start the inquiry as soon as possible, and would leave Palapye Road for Serowe on the following morning at 6.30 a.m., and asked me to start as early. I readily agreed and then requested Lieut. Nettleton to see Sir Herbert and find out whether there was any doubt about my being allowed to represent the Ababirwas at the inquiry. I also requested him to obtain Sir Herbert's permission to my employing one of the Basuto policemen at Palapye Road as an interpreter, as the interpreter for whom I had wired to Johannesburg had not yet arrived. He left me, returned within a few minutes and informed me that Sir Herbert had no objection to the Basuto policeman acting as my interpreter and that he would grant me an interview on the question of representation on the following morning; he asked me to attend at the Magistrate's Court at Serowe at 9.45 a.m., which I agreed to do.

HOOTED BY SOLDIERS

We left Palapye Road by car on the following day at the arranged time, and reached Serowe in about two hours; the Commissioner's car was about ten or fifteen minutes ahead of mine.

Khama's regiments had mustered in force in honour of the distinguished visitor. As my car drove along the ranks, some of the regiments mistook me for an official, evidently owing to the presence of the constable in my car, and cheered lustily; others, who recognised me for the enemy, booed as heartily. My witnesses had left Palapye Road for Serowe on the previous day, and I thought with misgiving of the folly of holding the commission in the capital of the defendant, and of the impression which those manifestations of hostility of the population in the kraal must have made on the Ababirwas.

I attended the Magistrate's Court at 9.45 a.m., the appointed time. The Ababirwas came a short time after and were squatting in groups on the rocks and under the trees which grew in front of the Court House.

I was made to wait until close to 11 a.m.

THE QUESTION OF REPRESENTATION

Captain Hannay, the Resident Magistrate of Serowe, came out and announced to the Ababirwas that the inquiry would commence at the Kghotla, Council House, at 2 p.m. I then ventured to inquire of the Captain what was to become of me, whether Sir Herbert

would allow me to represent my clients? The Captain looked uncomfortable, and replied that Sir Herbert had come to the decision that I was not to represent the Ababirwas. I told him that I had been informed by Lieut. Nettleton on the previous evening that I should be given an interview by Sir Herbert at the Court House that morning at 9.45 a.m., at which I would have an opportunity to place my arguments before the Commissioner as to the advisability of my so appearing. As the Captain remained silent, I asked whether I could see Sir Herbert. The Captain went inside, stayed for a few minutes, returned, and informed me that Sir Herbert would grant me an interview. I accompanied him through the small garden of the Magistrate's house and was given a seat on the verandah. Captain Hannay and Major Drury, the Magistrate of Francistown, also sat down. Sir Herbert came out in a few minutes, and I was introduced to him.

It struck me as curious that the interview should take place on the verandah, but I have reason to believe that Chief Khama was inside the house while the discussion between Sir Herbert and myself was taking place. Khama had arrived about a quarter of an hour before and was informed by Captain Hannay that he should go in to see Sir Herbert, as the Commissioner was anxious to greet him.

A REFUSAL

I asked Sir Herbert whether it was true that he had decided not to allow me to represent my clients. He said that was so, and that he had discretion under the proclamation appointing the commission. I replied that, in accordance with my recollection of the proclamation, he had no such discretion by virtue of the proclamation. He expressed some doubt on the subject, as he was certain that the point had been discussed in Capetown. He went inside, presumably to look at his papers, and came back with a copy of the letter which had been sent to me by the Imperial Secretary before the issue of the proclamation, in which the Imperial Secretary informed me that the Commissioner would have the discretion to allow the parties to be represented or not by attorney or counsel.

Sir Herbert did not seem to be able to realise that he was merely a creature of statute, and that any private instructions which he might have received in Capetown had nothing to do with the subject, but, as I was anxious not to

exasperate him by raising legal quibbles, I conceded that he might have the discretion, and that I anticipated with confidence that such discretion would be exercised judiciously.

I argued that, under the common law, my clients had the right to appoint an agent to represent them, that they had so chosen me, and that I failed to see any reason why it should not be desirable for the inquiry that I should represent them.

Sir Herbert rightly replied that the other side had not made arrangements to be represented by attorney. I pointed out in reply that my clients were in no manner to blame for the fact that the other side had not made such arrangements, and that I should have no objection to Captain Hannay or Major Drury appearing for the other side. The last, I admit, was a foolish suggestion, but was prompted by despair. Sir Herbert replied that it would be most improper for an official like Captain Hannay or Major Drury to take part in the proceedings and that, as a matter of fact, he had perhaps gone too far in allowing me to employ a Basuto policeman as an interpreter. I finally proposed that the inquiry should be postponed for a day or two to enable the other side to bring an attorney, but the Commissioner was not prepared to consider that.

A LONG ARGUMENT

Argument failing, I began to plead to be allowed to appear for the natives, and told him that the evidence was of a most terrible nature and would disclose that these people were kept in a state of slavery. Sir Herbert replied that I had brought a secretary along with me, and that nothing ought to be made public without the permission of the High Commissioner. I admitted that I had brought a shorthand clerk to take notes of the proceedings to enable me to conduct the case. I offered to give the Commissioner my word of honour, in writing if he preferred it, that nothing would be made public without such consent, if he would only allow me to appear for the Ababirwas. He said that, conceding for the sake of argument that I was sincere, how could I explain the strange fact that if the natives had been maltreated, why they should not report that fact to the nearest British official. Captain Govett, about 70 miles away, rather than travel to Johannesburg to engage me to act for them. Without allowing the covert insult to affect me, I calmly replied that that was a matter for the inquiry.

He said that I had written to the High Commissioner suggesting that the Administration of the Protectorate was prejudiced against Malema and myself. I replied that I did remember writing, with regard to myself, to the High Commissioner, but I did not suggest, I asserted, that the officials were so prejudiced. I went on to ask how he intended to get at the truth in the manner he suggested. He replied that each native could very well state his own case. I argued that an uneducated barbarian would be liable to omit essential points in his evidence. He replied that he had had wide experience, had lived amongst natives his whole life, and knew better.

"INSTRUCTED" WITNESSES

I argued that the evidence of my witnesses was bound to be met by the contradictory evidence of the other side; who would cross-examine Modisa-o-Tsile and his witnesses? He replied that Malema could do that. I argued that cross-examination was an art which could be acquired only after many years of practice and one could not expect to find the knowledge of it in an uneducated native. To my utter astonishment he then said that he had doubts whether our method of putting instructed witnesses into the box was the best means of arriving at the truth. That, naturally, gave me a shock, but I merely replied by assuring him that I did not instruct my witnesses nor made any suggestions to them. I explained to him how carefully and conscientiously I had collected the evidence and suggested, if he had any doubt on the subject, that he should, in my absence, cross-examine the Basuto policeman who had interpreted for me.

Sir Herbert did not doubt my word, as he did not act on my suggestion. He proffered the semblance of an apology by saying that he had made what was merely a general statement and meant no reflection on me. I replied that, unfortunately, the general included the particular and as he had brought it forward as an argument against the advisability of my representing the natives it could very well have had that meaning.

I again pleaded with Sir Herbert, arguing that, at the very least, my appearance could do no harm and might do some good; that I should raise no legal quibbles or technicalities; that I was most anxious to assist him in the inquiry; that I had been engaged on the case for the last eight months and knew it well; that I could be of assist-

ance and was only anxious for a complete, exhaustive and thorough inquiry. I offered that, if any person or persons considered it beneath their dignity to be cross-examined by me, I should undertake not to cross-examine them except Modisa-o-Tsile or any of the other participants in the raid and persecution.

Sir Herbert: "You mean Khama?"

I said "Yes."

He said that that was not in his mind and that, in any case, if he had allowed the natives the right of representation he would have impressed on their attorneys that Khama should be treated with civility, and went on to give his reasons, explaining Khama's important position and high reputation. I admitted the justice of his remarks.

AS ADVISER ONLY

I finally said that, if he could give me some good reason why I should not appear, how the inquiry could be prejudiced by my representing the Ababirwas, I should be prepared to drop my demand.

He gave me no answer; there could be no answer. He said, however, that he had no objection to my being present at the inquiry and advising my clients. That was an offer which I had not anticipated and I believe that it was a flash of inspiration for Sir Herbert himself; he seemed to be quite uncertain as to what I was to do in that role which he offered me. It immediately struck me that, if I accepted his offer, my appearance could do no good and might do a great deal of harm. I stated that such a role would be quite a novel one for me and I could not well understand my duties in that post. I could not very well whisper to my clients instructions through the interpreter. He said that there was some provision in the Magistrate's Court Act of the Union that a friend of one of the parties could be present as an adviser, and asked me whether I had any recollection of that section. I replied that I had no recollection of such section. Major Drury offered to fetch the Act, but Sir Herbert said it was unnecessary as he had made up his mind that I should not appear as an attorney but only as an adviser.

I said that I was too busy a man to be a mere spectator, that I had been an attorney for the last fourteen years, understood no other profession, and feared that I should only make a mess of the post he offered me in the inquiry; that I was convinced that without my, i.e., legal assistance, for the Ababirwas, the inquiry would not be complete, exhaustive and thorough, and for those reasons

I was not prepared to be a party to it and should go back immediately. Sir Herbert said that he would then be obliged to go on without me, and with kind sarcasm expressed his regret that I should have had so long a journey for nothing. I informed him that I believed that my clients would refuse to give evidence without me, that they, rightly or wrongly, considered that they were in the midst of their enemies, and they regarded me as their only friend.

Sir Herbert said that he was confident that the natives would give evidence unless I told them not to do so. I said that I would explain to them the whole position and ask them to act as they considered best. I informed him that it was my intention to immediately communicate on the subject with the Imperial Secretary, to which Sir Herbert replied that I should be quite justified in writing such a protest. I then left.

ABABWIRAS DECLINE TO GIVE EVIDENCE

As I went out, Captain Hannay followed me and summoned Malema and the interpreter to Sir Herbert. When they returned, we all left for the store where I was staying.

The interpreter, at my request, explained to the Ababirwas that Sir Herbert would not allow me to represent them as an attorney, that I was not prepared to appear for them in the capacity of an adviser, that I was leaving for Palapye Road immediately after lunch but that they could do as they liked.

They at once decided not to give evidence, and when I, after lunch, overtook them in my car, they were streaming from Serowe on the road to Palapye Road.

CHAPTER VI.

I was, and still am, of opinion that I acted wisely in not participating in the Serowe inquiry. In my opinion it could not be complete without the cross-examination of the witnesses, and might develop into a mockery of a trial. If I had consented to be present, and my fears had been realised, my very presence might be interpreted as acquiescence on my part and might seal with the semblance of truth that which would perhaps be only a travesty of justice.

I decided that I should prefer no inquiry to an inquiry of the nature proposed, and that I should absent myself therefrom to mark the importance of the issues involved, and that my absence and the probable absence of my clients should form the strongest protest possible to the proposed proceedings.

On the way and on my arrival at Palapye Road I was puzzling as to what Sir Herbert would do next. He would not very well return to Capetown without having held the inquiry. I came to the conclusion that I could expect with confidence that my witnesses would be arrested and would be hauled back to Serowe to give evidence.

On the following day, in the afternoon, five of the Ababirwas reached Palapye Road and reported to me that they had been overtaken on the road by Lieut. Nettleton and another man in a motor car, that Malima and three others were taken into the car, and the other Ababirwas ordered to return to Serowe, that they, the messengers, had been detached to give me the message that they would refuse to give evidence.

A number of wires were then exchanged between Mr. Blackwell, who was then in Parliament in Capetown, and myself, Mr. Blackwell acting as intermediary between myself and the Imperial Secretary. I informed Mr. Blackwell that I had reliable evidence to prove arson, rape, robbery, torture, and slavery for two years, that the Commissioner, without assigning any reason, refused to allow my clients the right of representation, and asked the Imperial Secretary to come down himself.

I also wired to Sir Herbert advising him of the fact that I was communicating with Capetown, and asking him to postpone the inquiry pending the receipt of a reply, to which, however, he replied that he was not prepared to postpone the inquiry. Mr. Blackwell replied to me that the Imperial Secretary was of opinion that Sir Herbert had the discretion to allow or refuse the right of representation. I wired denying that fact and referred Mr. Blackwell to the proclamation.

COULD REPRESENTATION BE REFUSED?

On the following morning I received a telegram stating that he could do no good, that I was to make the best of things, and added that the Imperial Secretary was of opinion that the Commissioner had the discretion to refuse representation under Section 5 of the proclamation.

Any doubt I may have had of the farcical nature of the proceedings vanished when I read that telegram, and all right-minded men will agree with me when they read that section and realise the impossibility of even extorting that interpretation out of the plain words of the section. It reads:

"Section 5.—Every witness who shall attend before the Special Commissioner

and shall refuse to answer or to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him at or with the concurrence of the Special Commissioner; and every person who shall at any sitting of the Special Commissioner, wilfully interrupt the proceedings or be guilty of any disrespectful or improper behaviour shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding £50, and, in the failure of payment, to imprisonment with or without hard labour for a period not exceeding three months."

I had already sent to Mr. Blackwell a full report of what had happened at Palapye Road and Serowe, together with a copy which I asked him, if he deemed it advisable, to hand over to the Imperial Secretary; a copy of such letter I also sent to Sir Herbert with a request to check the correctness of my report of our interview.

On the receipt of the last wire, I wrote to Mr. Blackwell and informed him that I had come to the conclusion that I could not expect any impartial trial or a just verdict from the authorities of the Bechuanaland Protectorate, and that it was my intention to pillory the whole scandal in the eyes of the civilised world, and told him that if he thought it advisable he could communicate this to the Imperial Secretary. I understand that Mr. Blackwell did not in fact hand that communication to the Imperial Secretary.

Malima and his followers returned to Palapye Road about two days later, and I obtained from them a full report of the proceedings.

WHAT HAPPENED AT SEROWE

They were brought back to Serowe late in the afternoon on the day I left and were brought before the Commissioner. Sir Herbert asked Malima why he did not put in an appearance, when Malima explained that he relied on my conducting the case, and, as I was going away, he preferred not to take part in the proceedings. The Commissioner then informed Malima that he was under arrest and asked him to state his case. Malima commenced to state his grievances, when it was found necessary to bring the other Ababirwas who had been left at their camp; when they had been brought, the inquiry was postponed for the following morning.

The inquiry lasted the following two days, a portion of the second day being occupied by a long harangue by Khama. When I state that I had about forty

witnesses and expected the other side to have at least as many, and that I looked forward to the inquiry lasting at the very least two weeks instead of two days, the slipshod manner in which it had been conducted will be realised.

The Ababirwas had not been actually interfered with, except that Khama had attempted to impress on them the futility of proceeding against him; he told them that he was a great chief, and that I could do him nothing, as I was only an insignificant Jew, and that he had no fear of the result of any action which might be taken against him.

MATERIAL EVIDENCE OMITTED

It appeared that a considerable amount of evidence did come out before the Commissioner, although material portions were omitted through the inexperience of the witnesses or the folly of the interpreter. For instance, one of the Ababirwas rose to lodge his complaint about the rape of the women, and Johnny, Khama's interpreter, who interpreted for the Commissioner, told the witness that he must not say such things as they were not fit for white men to hear, and, should they give such evidence, they would all of them be arrested. I also understood that none of the evidence with regard to the persecution at Bobonong came out. To my astonishment, according to my witnesses, the other side made hardly any attempt to deny the allegations but admitted them when they were made.

They also informed me that they were questioned about the statements made by them to Captain Nettleton and the affidavits given subsequently to me when they again asserted the falsity of the allegations contained in Captain Nettleton's report.

I understand that Khama was in a rage, reminded the Commissioner of the recent revolution at Johannesburg and threatened that he would soon be making a strike if Malima and Gluckmann would be allowed to further persecute him.

I left on the following Monday, and, before leaving, decided to send a last letter to Chief Khama, through Captain Hannay, placing on record the interpreter Johnny's intimidation of my witnesses, and again suggesting a reasonable settlement. I received no reply either from the Special Commissioner or from Khama to the letter sent by me to them.

I returned to Johannesburg on April 19, 1922. During my absence a letter had been received from the Imperial Secretary in reply to my last letter to

him, in which he intimated that the topic of the Ababirwas was distasteful to him and that the correspondence on the subject must cease.

On May 5, 1922, the Imperial Secretary wired to me, reply paid, to the effect that Sir Herbert Sloley has just shown him my letter to Mr. Blackwell of April 12, 1922, and requesting me to send him the names of my witnesses who could testify as to the rape of the Ababirwa women.

I sent him the names of eleven witnesses, and, on May 8, I received a further wire, reply paid, asking for their addresses. To that I replied refusing to give such addresses, explaining that I understood the request to mean that another inquiry similar to the last was being contemplated, but offering all assistance in my power if the natives would be given a just trial. I received a reply, not reply paid, expressing regret that I was not prepared to assist the Administration in their investigation of the alleged serious crimes. I seldom regretted any act in my life more than the disclosure of the names of my witnesses; who knows what tortures I may not have exposed these poor men and women to at the hands of Khama's adherents.

I wish to conclude with the expression of hope that you, my readers, will believe that I have drawn up this

report with all honesty; I give you my assurance that I have made no attempt to suppress any fact of importance, nor to exaggerate any enormity discovered, nor did I strive after effect. The occasion is far too solemn and serious, the step I have taken too full of risk.

I wish you to bear in mind that these horrors are being perpetrated at the very threshold of the Union; that the High Commissioner of South Africa is also the Governor-General of the Union; that Khama's men may be sowing a harvest which we or our children may be called upon to reap; that it behoves us as freemen, as the dominant race of the sub-continent, in whose land the humblest can be certain to obtain a fair hearing and an impartial trial, to extend a helping hand to those dumb, helpless slaves, and to insist that their case should be tried by an impartial tribunal.

That is all I ask. I cannot ask less.

I expect every reader who has some pride in being a South African, who can feel some pity for those unfortunates, to write to the High Commissioner and join in my demand for a fair trial. Should the public of the Union fail to take notice of my appeal, a share of the blame must inevitably attach to them who have the remedy in their hands and refuse to exercise it.

END.



THE TRAGEDY OF THE ABABIRWAS.

REFLECTIONS ON SIR HERBERT SLOLEY'S REPORT.

CHAPTER I.

Sir Herbert Sloley's report on the complaints of the Ababirwas must have formed quite a stage in advancing the education of the High Commissioner's office on the question of the administration of the Bechuanaland Protectorate, for, strange to say, it is totally inconsistent with the report on the subject of the Ababirwas received by that office from the Resident Commissioner in November, 1921. Such of my readers as are not acquainted with the November report are referred to the issue of the "Rand Daily Mail" of May 11, 1922.

Sir Herbert finds as facts:—

(1) That the Ababirwas were forcibly removed from Tuli Block by a regiment under Modisa-o-Tsile acting on the orders of Khama.

(2) That some of the natives had already ploughed.

(3) That it was feared that the Ababirwas "were quite capable of offering serious resistance to any small party who might be sent to enforce a very disagreeable order"

(4) That, under native law and custom, Khama would be justified in sending a strong party to deal with any resistance that might be offered.

(5) That regiments or impis sent on such errands almost invariably commit acts of violence and there are always complaints of destruction of property and slaughter of stock. Any resistance or argument is dealt with very summarily, often by the use of the sjambok; Khama compares such an expedition to a pack of wild dogs.

(6) That the huts were burned by the regiment, some property destroyed, and some people maltreated.

(7) That Sergeant Whittlesea, at Tuli Block, was apathetic and indiscreet, and that Modisa-o-Tsile should be removed from his post at Bomonong, his rule being somewhat too harsh for the Ababirwas.

(8) Sir Herbert has even discovered from Sergeant Whittlesea's affidavit "a little blood just above Koma's eye."

And, thanks to Mr. McGregor, the Resident Commissioner, His Royal Highness has all the time been under the impression that "in June, 1920, the Ababirwas in Tuli Block requested Khama's permission to return to Bononong and Modisa-o-Tsile was sent to tell them that they might do so"; that some of the Ababirwas were not willing to return, but all were quite free to accept or decline; that no complaints of acts of violence done to the Ababirwas and their property were received; that the huts were burned by the Ababirwas themselves according to native custom; that they appeared to be satisfied at Bobonong, where they were living in contentment and plenty under the rule of Modisa-o-Tsile.

These discrepancies are irreconcilable, and open to a vista of a sequence of logical conclusions which is destructive to the Administration.

I first approached the High Commissioner in the matter on October 14, 1921, and he referred for information to the Bechuanaland authorities; it took them over one month to complete their investigations.

How was it that so misleading a report had been sent by the head official of the Protectorate to the highest official in the land? Who conducted the investigation? If not Mr. McGregor, what minor official, and how had he come to receive such obviously false information? What were the sources from which that information has been derived and for what purpose had those sources been tainted?

The ejectment of the Ababirwas had been authorised by Mr. McGregor and ordered by Captain Nettleton; they had occupied their posts in the Administration for years, and it is ridiculous to argue that they were not acquainted, as well as Sir Herbert acknowledges himself to be acquainted, with the invariable results which must follow on sending a regiment "of wild dogs" to assist the tribe in moving." Why did they allow themselves to be misled? Why did not Sir Herbert, while at

Serowe and Mafeking, enquire into the manner of the birth of the false report? Why does not the High Commissioner institute an enquiry into the scandal? Sir Herbert criticises a poor sergeant of the police who, after all, "let Modisa-o-Tsile proceed in view of the letter he had brought from the Resident Magistrate of Serowe. Captain Nettleton, and I considered that I was to take no action": he recommends the removal of the barbarian Modisa-o-Tsile, who, Sir Herbert must bear in mind, acted only according to his lights. It was in vain that I searched in Sir Herbert's report for some word of condemnation on Mr. McGregor; on the contrary he goes out of his way to speak of him in terms of trust and respect. The fact that I found no such condemnation is, I submit, a serious reflection on Sir Herbert's ability as a judge, his ability to exclude from the theatre of his enquiry all prejudicial influences, his capacity to draw correct conclusions from the disordered multitude of facts which had been presented before him, and of all the misfortunes suffered by my clients the appointment of Sir Herbert to the post of Special Commissioner has been the greatest. Sir Herbert appeared to me to be a soldier and not a judge; a man who may be excellently fitted to take the chair at a court martial, but not in an enquiry necessary for the investigation of my clients' grievances.

THE TWO PICTURES

Sir Herbert comes to the conclusion that the Ababirwas were tenants at will of the British South Africa Company, and, as such, were liable to be ejected at any time; that it was Khama's duty under his agreement with the English authorities to remove them from his reserve whenever called upon; that they were forcibly removed at Khama's command by Modisa-o-Tsile, but that his men were not guilty of any particular atrocities nor has there been a greater destruction of property than might be expected under the circumstances; that the Ababirwas had some reason to be dissatisfied with the rule of Modisa-o-Tsile; that their complaints of starvation were mostly due to a general scarcity of grain in the Protectorate; but that all their grievances could be met by a free grant of corn and a change of the headman: that they have all or nearly all their cattle with the exception of Malema, who had parted with nearly one thousand head of cattle to the law agent and that he, the Commissioner, did not know—Sir Herbert, that was the most un-

kindest cut of all—if, "there will be any balance in his favour when his account is settled." Thus, according to Sir Herbert, to use a colloquial expression, "everything in the garden is lovely"; Khama is a strict but just and benevolent ruler, and the many grievous complaints are the off-spring of an idle or, perhaps, designing brain.

I, for one, cannot agree with Sir Herbert's findings. I am convinced that the Ababirwas are enslaved and are starving and, before I left Palapye Road, I caused a message to be sent to them that all such as were hungry should come to my cattle post and I shall feed them for so long as I shall be able; I am sending them periodical supplies of grain out of my pocket; I have given instructions to my representative at Palapye to slaughter my cattle and distribute the meat among the sufferers. If Sir Herbert could only be brought to believe that I possess as much sincerity and honesty of purpose as, at least, Modisa-o-Tsile.

I wish to add that I am not alone in my belief that the conclusions come to by Sir Herbert are ridiculously inaccurate. In answer to my appeal in the Press I received a batch of letters from Bechuanaland with expressions of sympathy and promises of assistance. One correspondent, a man who had been for years in the Protectorate and is intimately acquainted with it, writes: "I may tell you outright that the conditions prevailing in this Protectorate both as regards the whites and the natives are too awful to be believed outside of the country."

FURTHER ALLEGATIONS

Since the enquiry, I have received a further number of statements from Bobonong with new complaints. Only a week or two after Sir Herbert had left Serowe with the consciousness of a duty well done, Malema's daughter, while lying sick in a hut at Bobonong, was brutally and repeatedly assaulted and violated by two of Khama's soldiers. Another woman was raped in the presence of a number of her friends: she was carrying her child on her back and the assailant, before hurling her to the ground, broke the strings of her shawl and the child was flung alongside his struggling mother. The statements are monotonous in their repetition of misery and oppression.

Sir Herbert is quite wrong; these people are being kept in a state of the most abject slavery on this very day.

I do not, however, blame Sir Herbert; he may have been actuated by the most

excellent intentions. But I blame Khama and his adherents, they who were responsible for the staging of the fifth act in the tragedy of the Ababirwas, and created the host of circumstances which made an exhaustive and correct enquiry impossible. I anticipated a favourable verdict from Sir Herbert as little as I now anticipate a result favourable to my clients from the enquiry which was held last week, in the matter of the complaint of the wholesale rape of the Ababirwa women on their march to Bobonong.

In the portion of my report which appeared in your issue of May 16, 1922, I stated, *inter alia*, that at the request of the Imperial Secretary, I had sent to him the names of my witnesses on the complaint of the violation of the women, and that he indicated in his reply that he would cause an enquiry to be held. I have now been informed that such enquiry has been actually held at Palapye Road and Bobonong by Lieut. Nettleton.

Lieut. Nettleton impressed me as being a youth of about 22 or 23 years of age, of a modest and retiring disposition. It is most unlikely that he should be a gentleman conversant with the conduct of an enquiry of so important and so momentous an issue.

Khama's regiment was being charged with systematically and repeatedly violating the women of a tribe numbering, according to Sir Herbert, over one thousand souls, while under their protection on the march to Bobonong, and the Imperial Secretary has deemed it expedient and sufficient to send a military youth of no experience to gather evidence and report on what Sir Herbert considers to be a most serious criminal charge. They are merely mocking at the misfortunes of my clients. I blame Lieut. Nettleton as little as I blame Sir Herbert; they should never have been appointed to a post for which they possess as little qualification as I for the post of Archbishop of Canterbury.

Unfortunately for the Administration, Sir Herbert's report has no substance and is thread-bare to the experienced eye, and I propose, in my next instalment to deal with it, basing my arguments to deal with it, basing my argument on the intrinsic evidence to be derived from the report itself.

CHAPTER II.

To the unbiassed mind, Serowe would have seemed the place least suitable for the proposed inquiry.

When my agent at Mafeking informed me that Khama insisted on the case being heard at his capital, I protested most emphatically. Serowe is Khama's stronghold. It is the centre of all his pomp and power. It houses a population of 30,000 natives who, from their childhood, have worshipped Khama as the wisest and the most powerful of monarchs. It swarms with his soldiery arrogant in the knowledge that their king is the only native ruler in South Africa with the right to maintain a standing army.

Can it be questioned that Serowe was hardly the place to exercise a soothing influence on the nerves of my 40 Ababirwas who had come to testify against their conquerors and masters?

The High Commissioner's department which had consented to make Serowe the theatre of the inquiry had not even the excuse of the convenience of the locality for the Special Commissioner or the witnesses. The railway station, Palapye Road, lies nearly midway between Serowe and Bobonong; all the complainants and the accused, with the exception of Chief Khama at Serowe, and my few herd boys at Palapye, resided at Bobonong.

In view of the advisability of examining as many witnesses as possible, and the extreme difficulty of transporting, housing, and feeding so many human beings at Serowe, all reasons pointed to Bobonong as being the site more appropriate for the examination. Even if the Imperial Secretary disliked to expose the Special Commissioner to the inconvenience of a prolonged stay at a Kaffir kraal like Bobonong, I submit that the site next best in choice was surely Palapye Road, which boasts a reasonably comfortable hotel, and is in easy touch with the outside world by rail, telegraph and telephone.

But Khama desired the commission to be held at Serowe, so naturally at Serowe it was held.

Both my witnesses and I well appreciated the significance of the decision, but we had no option. It was, however, logically inevitable that this evident anxiety on the part of the authorities to comply with Khama's wish and the contemplation of a hostile reception by the population at Serowe should have an intimidating impression on the Ababirwas, and that impression was enhanced through an unfortunate series of circumstances.

THE REPRESENTATION QUESTION

Sir Herbert barely makes reference to my application, on behalf of the Ababirwas, for legal representation, and dismisses the incident with a few careless words. The interview between us which lasted over an hour, which seemed to me so pregnant with significant meaning, which was the starting point of my ultimate decision to seek redress in the columns of the Press, seemed to have made no impression on Sir Herbert whatsoever; it is obvious that I bored him, and I am surprised that, during our interview, he succeeded so well, in pretending to be so thoroughly in earnest, and politely refrained from yawning.

Neither at Serowe nor in his report to the High Commissioner did Sir Herbert think it necessary to give the reasons which actuated him in refusing the fundamental right of legal representation to complainants, who were so obviously incapable of conducting their own case; although at our interview I begged him to acquaint me with such reasons, although a good reason or two would certainly not have been out of place in his report: on the contrary, would have graced it. He seems as determined as Falstaff "not to give any reason on compulsion, even if reasons were as plenty as blackberries."

However it be, the fact remains that the one man in the ranks of the complainants, who neither feared Khama nor cared a jot for his pretensions to the divine right of kings, the man to whom they had, for the last eight months, looked up as their only friend, able and willing to speak for them, was allowed to leave, and even Sir Herbert must agree that such a step could hardly have a reassuring effect on my witnesses. I know that Sir Herbert's decision coincided with Khama's wish, and my application was refused.

My contention that Sir Herbert committed an error of judgment in treating my application so lightly is proved by what followed.

ARRESTING THE PLAINTIFFS

The Ababirwas decided to leave with me, and Sir Herbert was obliged to take recourse to the most extraordinary and violent step of arresting the complainants and hauling them back to testify before his Court as to their grievances.

Some may interpret Sir Herbert's action in his favour, as indicative of his determination to do justice and repair the wrongs of the Ababirwas even against their expressed wish.

But Sir Herbert must again agree with me that his decision, however made necessary by circumstances, could hardly have a reassuring effect upon my witnesses. I was told that Khama also desired the Ababirwas to be arrested and brought back, and Khama must have been pleased to see his secret wishes carried out.

It is regrettable that Sir Herbert deemed it advisable to hold a pitsa (i.e., a native gathering) at the Kgotla, instead of an ordinary magisterial inquiry. Imagine the scene: a huge enclosure capable of seating 1,500 spectators packed to its utmost capacity by the soldiers and the subjects of King Khama; in the reserved place of honour are seated the King, Sir Herbert, the Resident Magistrates of Serowe and Francistown, and Lieut. Nettleton; into this assembly are led in by an escort of police the accusers, my handful of Ababirwas. Sir Herbert must again agree with me that the atmosphere could hardly be reassuring for my witnesses. The Commissioner's notes on the commencement of the inquiry deserve to be given in extenso:

"The gathering at the Kgotla numbered perhaps 1,000 men or more of whom the vast majority were Bamaagwato or Mabitwas who were adherents of Khama and Malema must have felt at first that he was in a hostile atmosphere. Two little incidents revealed the feeling. Malema, when entering the Kgotla, saluted Khama in a manner rather lacking in deference usually paid to a chief of his rank. Later on Malema rose to speak, but did not take off his hat, and there were angry cries calling upon him to do so. I checked these demonstrations and wishing to reassure Malema I suggested that he should be given a chair. Khama objected to give him one of his own chairs, and pointed out that Malema should have brought his own stool as other headmen in Court had done, and as is usually done by natives of position who attend such gatherings."

The Commissioner implies a censure on Malema for not greeting his oppressor with more humility; if the Commissioner had possessed a little more of the milk of human kindness, he would rather have sympathised with the old and broken chief who was dragged back like a felon to state his complaints under the most humiliating circumstances, and then saw the man, whom he considered to be the chief cause of

his utter ruin and destruction, sitting in honour by the side of the judge who was to try his case.

I fail to understand how Sir Herbert could imagine that the offer of an article of furniture which, although useful, has never been considered by me as possessing any special qualities of consolation, could dissipate the fear and trembling which must have filled Malema when he stood listening to the din of execrations and threats against him, when he suddenly found himself to be in the position of the accused instead of the accuser. Anyhow, Khama's wish was followed even in so slight, so puerile a matter; the loan of a stool was refused with contumely, and Sir Herbert must agree that Malema remained unassured.

If Sir Herbert had only carried his investigations to their correct conclusion, he would probably have found that Malema's stool was destroyed together with his other assets when Khama ordered his "wild dogs" to invade the Ababirwas to his Reserve.

THE WRONG SORT OF INQUIRY

Had Sir Herbert followed the simpler course, if, instead of having an audience of over 1,000 hostile, angry and excited natives, he would have had a score of impartial onlookers present in the Magistrate's Court at Serowe, these intimidating influences would not have been present, and their attorney could have relied with some confidence that the evidence which had been obtained from his witnesses in his absence had been given by them without fear of punishment or without the desire of currying favour with their masters.

I am glad to see that Sir Herbert agrees with me that the atmosphere was not conducive to inspire my witnesses with confidence, but I must express my surprise that he could think of no better means of quieting their fears than the offer of a stool to their Chief, which offer he evidently could not carry into effect.

But Khama approved of the holding of a pitsa, and a pitsa was accordingly held, without the complainants or their legal representative being in any way consulted, as little as they were consulted with regard to the place or any other detail connected with the examination.

So much for the scene where the tragedy was being enacted, and, in my opinion, the manner in which the enquiry was conducted must similarly be condemned by all impartial men.

When Sir Herbert commenced the inquiry he had been made acquainted in Capetown and Mafeking with some of

the serious allegations which had been made against Khama, his adherents and the Administration.

Before my interview with Sir Herbert, I had a discussion with Captain Hannay in the course of which I informed Captain Hannay of the violation of the Ababirwa women on the march to Bobonong; Captain Hannay, immediately after, went in to Sir Herbert; it is inconceivable that he should not have informed Sir Herbert either on that day or during the subsequent two days of the inquiry, in which he participated, of the information supplied by me to him, yet the women witnesses of the Ababirwas were not present at the proceedings, nor was there a single question asked either by the Commissioner or Captain Hannay to test the truth of my accusations.

During my interview with Sir Herbert, before the commencement of the inquiry, in the presence of Captains Hannay and Drury, I informed the Commissioner that the evidence was of a most terrible nature and would disclose that the Ababirwas were being kept in a state of slavery, yet, no question was directed by either the Commissioner or the Magistrates to any of the witnesses to indicate an attempt, a desire, to prove or disprove that allegation.

On the first page of my letter to Mr. Blackwell, of April 12, 1922, a copy of which I caused to be delivered personally to Sir Herbert in the afternoon of the day when he left Serowe for Mafeking, are set out my charges of arson, robbery, violence, rape, torture and other crimes of a less serious nature against Modissa-o-Tsile and his followers; that letter must have been delivered to Sir Herbert at about 4 p.m.; he left Serowe for Palapye Road that night at about 12 o'clock, and spent two days at Mafeking; I cannot believe that Sir Herbert did not read my letter when it was handed to him at Serowe, and, if he did read it, how could he explain why he neglected to remain another day or two at Serowe, why he did not cause me to be sent for from Palapye Road to prove my allegations? Is it not strange that an official, who has accepted so high a responsibility, should receive so serious an indictment in connection with his inquiry, during the investigation of that inquiry, and deem his duty performed by merely recommending in his report "that Mr. Gluckmann should be called on to produce his evidence"? Sir Herbert was made acquainted with the charges while gathering the information required for his report. Why did he not give me that opportunity at the time? Surely

Sir Herbert must agree that that was the fit and proper time? Sir Herbert Sloley does not even advance the reason that he desired quickly to return to Capetown; I do not wish to suggest that that was the reason, but the facts are so inexplicable, that one is reduced to invent some excuse why Sir Herbert did what he did do and neglected to do what he did not.

A CHARGE OF APATHY

I must charge Sir Herbert with the apathy with which he deemed it proper to charge Sergeant Whittlesea; apathy is the proper term which describes the manner in which the Special Commissioner conducted his examination. He knew that one thousand human beings had been transported from Tuli Block under circumstances of—to summarise his finding—excusable atrocities, and that out of that multitude he had about thirty men before him, and, knowing all he did know, how could he justify the fact that the procedure which he adopted happened to be the worst method for elucidating the true facts? He called on the accusers to state their complaints; he did not take into consideration the fact that some of them might be too timid to speak, some unaccustomed to public speaking, some hesitant to speak before so august an assembly, some lacking the ability to sift their great wrongs from the small, although they all had the capacity to suffer. A witness, in the midst of his statement, would be interrupted by an opposing witness, who, in his turn, would commence a long harangue, and the discussion would shift from the original topic to another topic. An Ababirwa, while testifying to some loss of property or to some violence done to him, would be interrupted by Modissa-o-Tsile, and one can actually visualise the frown of the headman and the shrinking of the witness, as he denied that the headman had authorised the violence.

The result is, naturally, that the evidence is haphazard and bewildering and Sir Herbert could not, with the best intentions in the world, come to any conclusion different from the one he did come to.

Can anyone conceive circumstances more unfavourable than those above enumerated for a Commissioner to arrive at the true facts of a case? I am doing my best to be fair and impartial to my opponents, but it seems to me that it cannot be denied that the report of an inquiry held at such a place, under such circumstances, must be regarded with the utmost doubt and suspicion.

CHAPTER III.

When I petitioned the High Commissioner for the appointment of a special court, I explained that, as Malema's legal adviser, I could not allow my client to continue with his case then pending in the courts of the Protectorate, as certain events had occurred which had created in my mind the impression that the whole force of its officialdom was being used to thwart and defeat the plaintiff in his proposed action.

I wrote: "My single desire is to secure a fair, impartial, and early inquiry into the facts on behalf of my client. If, after such inquiry, it be found that his charges are baseless, he and I shall be satisfied, but, with great respect to Your Royal Highness, I urge that, under the British Flag, we are entitled to nothing less than that."

After reciting at length the good and sufficient reasons which had caused my client to despair of receiving fairplay at the hands of the officials, I prayed for the appointment of, as arbiter in my client's cause, any advocate of standing in the Transvaal, or any other impartial tribunal to be nominated by his Royal Highness.

OFFICIAL BIAS

Imagine my consternation when I heard that the High Commissioner had acceded to my client's petition, and had appointed as Commissioner, an official. I thought of the words of the fable:—

"Why does the cuckoo praise the cock?
Because the cock praises the cuckoo."

I trust that neither the cock nor the cuckoo will accuse me of suggesting that they were ever officials in the High Commissioner's department; I advance my quotation only as an argument that affinity of occupation and the common interests and habits of a lifetime are bound to engender a bias.

The High Commissioner had failed to appreciate the fact that the inquiry could not possibly be restricted within the limits of the accusations against Khama and his native subjects, but that the Administration itself would be on trial, as Khama maintained that his invitation to the Ababirwas had been sent at the instigation of the authorities. I had heard of a proconsul being set to capture a proconsul, but never of a proconsul presiding at the trial of a proconsul; Sir Herbert undoubtedly possessed all the qualifications of an expert witness in the proposed trial, but his elevation to the presidential chair was not only an error of judgment but a sin against good taste.

I knew well that the persecution of my clients was not an isolated instance of tyranny in Bechuanaland; men I spoke to at Mafeking, on railway journeys, Palapye Road, Serowe and elsewhere complained bitterly of the never-ceasing oppression, giving one example after another, but, at the same time, earnestly urging me not to make their names public as they were dependent on Khama's whim for their livelihood. To prove to my readers that similar lamentations are heard in other domains of the High Commissioner, I need only refer them to the issue of the "Star" of May 20, 1922, in which the responsible authorities are accused of upholding legalised slavery in Basutoland, the land where Sir Herbert used to live and rule.

I had come to believe that this aiding and abetting of Khama at all costs was due to a pernicious system of government; Sir Herbert had been the Resident Commissioner of Basutoland for years, and had become inured to a government under which, according to Sir Herbert himself, regiments or impis of barbarian-soldiers are employed in the abduction of innocent, peaceful populations from their old homes, opposition or arguments are silenced by the slash of the sjambok, property is recklessly or wantonly destroyed. He regards the employment of such bodies as "an effective but rough way of carrying out an order."

Most effective, Sir Herbert, as effective as Caesar's pacification of Gaul; but was it just to the subject population to appoint Modisa-Tsile to decide on the limit of violence to be employed?

However anxious Sir Herbert might be to deal out even-handed justice, I feared that he would be unconsciously biased in favour of a state of things which he regarded as existent, natural, and justifiable. How could I expect him, for the sake of a nigger or two, to condemn a fellow-official, and, perhaps, an intimate acquaintance?

I had previously heard of Sir Herbert. He was being recommended to me as a high official of wide experience; it was his very experience which filled me with foreboding and apprehension; Sir Herbert had sat in Bechuanaland as a Special Commissioner before, he presided at the trial of "Inquisitor"

EARLIER ALLEGATIONS

I had been told a great deal about "Inquisitor" both in January and in April, 1922, at Mafeking and at Palapye Road, when his dauntless, single-handed, self-sacrificing attack on the might of Khama and the Administration and its sad ending were held up as a warning to me of the danger and the futility of my

own efforts.

"Inquisitor" had no axe of his own at all to grind; he was not even an attorney defending a client. He had been the manager for eighteen years of a trading store in Khama's Reserve, having nothing to gain and everything to lose by his interference.

One day, in the year 1914, when at Serowe, while exchanging the news of the day with some of the natives, he was informed that three old women had been "smelt out," i.e., denounced by the witch doctors, on the previous day, as having been the imaginary cause of some mortality or illness. "Inquisitor" saw those three old women; they had been tortured, their heads the size of pumpkins, their eyes out of sight owing to the swelling, their faces and bodies covered with sores.

"Inquisitor" remained with the victims and sent a note to the Resident Magistrate to come at once with medical assistance and the police. The magistrate arrived with help in about an hour and the women were taken to the camp and attended to. As the authorities took no action, "Inquisitor" swore an affidavit stating the circumstances of the case, and sent it to the High Commissioner. No notice was taken of the affidavit so far as the outside world knew.

"Inquisitor" then published a series of articles, under his "nom de plume," in the "Sunday Times," which were subsequently compiled in a pamphlet sent to me by a sympathiser in Bechuanaland, giving a short account of the benevolent rule of King Khama.

The publication of the pamphlet was followed by the persecution of "Inquisitor"; guards were set around his store who enforced a strict boycott. His employers, who happened to be men of fair mind and great consequence, insisted upon an inquiry, and Sir Herbert Sloley, K.C.M.G., was appointed as Commissioner.

"Inquisitor," after the inquiry, wrote to a friend: "I have never ceased regretting that I asked for an inquiry, because I would have received the same sort of justice without the trouble, had I merely asked Khama to convict me and trusted to his mercy."

"Inquisitor" was invited to be present at the Commission, where he was accused of interfering with the native customs; Khama was the complainant; one native after the other corroborated his accusation. One's heart warms to "Inquisitor" in the brave fight he put up. He had no witnesses, no legal assist-

ance, and no past experience to guide him, but, staking all he had to lose in a quarrel not his own, he stoutly cross-examined the great chief and his horde of followers.

The report of the inquiry was never made public so far as I know; "Inquisitor" was obliged to leave the Reserve.

Nothing can convince me that "Inquisitor" was a mere meddler; his figure is far too heroic, too human.

His pamphlet is a simply-written document. According to "Inquisitor," it is undeniable, although incredible, that acts of "smelling out" followed by ghastly forms of torture—described in blood-curdling detail—were still practised at Serowe with its Christian chief, its missionaries, its magistrate and its police force.

"Inquisitor" goes on to accuse Chief Khama's people of countenancing the practice of slavery. He writes: "Slavery is just as much in vogue in Bechuana-land now as it was fifty years ago. There is, of course, no trading in slaves. There never was. But these hereditary servants, or Masarwa, have nevertheless to do the bidding of their masters whether they like it or not, with no wages except food of sorts."

CHAPTER IV.

The martyrdom of "Inquisitor" filled me with misgiving for the future of the Ababirwas.

I had been in practice for years before a Bench renowned for the meticulous caution of its occupants to avoid any influence which might affect the even balance of their judgment, and had come to regard their consideration to litigants and their courtesy to those litigants' legal representatives as the necessary adjuncts of the judicial office.

I early recognised the presence of those qualities to an eminent degree in the Special Commissioner, with this distinction, however, that, whereas our judges display as great an impartiality in the distribution of their favours, Sir Herbert seemed to me to show a benign aspect to only one of the parties in the dispute. Need I say to which party?

Bias, quite unconscious, but nevertheless real, could be seen in every one of his actions, can be traced in every line of his report.

On his way to Serowe, the Special Commissioner has interviews with Mr. McGregor and Mr. Minchin, on the subject of the inquiry.

Why differentiate? Why did not the Special Commissioner afford to me the same facilities for swaying his judgment as to Mr. Minchin?

Nothing can be farther from my mind than any intention to impute the consciousness of improper motives to either Sir Herbert or Mr. Minchin, but they must admit that, in that respect, the legal representative of Khama had been favoured before the attorney for the Ababirwas.

MYSTERIOUS DOCUMENTS

In his laudable anxiety to be able to preside at the inquiry armed with full information on the questions in issue, the Special Commissioner then unconsciously takes a step which, I feel sure, must be without parallel in the history of modern legal investigation. He states in the forefront of his report: "Mr. Minchin placed in my hands some statements made by Chief Khama and others. Mr. Minchin's letters and copies of these statements are attached to the report."

Why was no notice given to the attorney for the Ababirwas of that relaxation by the Special Commissioner of the strict rules of evidence? Until the receipt by me of Sir Herbert's report, I was not even aware of the existence of those documents, and, when I recently applied to the Imperial Secretary for leave to take copies of the letters and statements, I was informed that they were not for the vulgar gaze.

Not only was I left in ignorance of that new mode of procedure, but Sir Herbert, during our interview, made it clear to me that he distrusted "instructed witnesses," a statement hardly in consonance with the innovation introduced by him, unless I am to interpret his observation to apply only to the Ababirwas or to witnesses instructed solely by the attorney for the Ababirwas.

I should be the first to repudiate any suggestion that might be made that the Special Commissioner evinced any conscious predilection in favour of the legal representative of Khama, but both Sir Herbert and Mr. Minchin must admit that the attorney for the paramount chief, in that respect also, had been favoured before the Attorney for the Ababirwas.

I am confident that, in the leisure, security, and privacy of my office, I and my witnesses could have drawn letters and statements even more interesting and convincing than those of Mr. Minchin and his witnesses. Had I been given the opportunity, I should have laid before Sir Herbert such a multitude of documents, so cogent, clear and powerful, as would have impressed the Special Commissioner with the consciousness of my clients' sorrows, and he

would have arrived at Serowe convinced of the validity not only of the defence to an indictment he had not read, but with the full knowledge of the charges in that indictment.

THE EVIDENCE

But even Sir Herbert feels that his action requires some explanation. He goes on to state: "Most of the people who made statements subsequently appeared before me at Serowe and gave their evidence publicly and under cross-examination."

Publicly?—Quite true, before an important and enlightened assembly of Bamangwatos.

Under cross-examination?—Surely, Sir Herbert is not serious? I have carefully studied the twelve columns of the record of the evidence. I could see it marked in the record that the Ababirwas were "cross-examined by" Khama; Modissa-o-Tsile, the Special Commissioner and Captain Hannay. Four lines suffice to contain the cross-examination by my clients: an unimportant question, to a less important witness, by that keen cross-examiner, Matima.

This obvious, although unconscious, bias, in favour of Khama and his followers, is even stronger when the integrity of the officialdom must in any way be questioned. There Sir Herbert refuses to listen to any imputation; his feeling of unconscious partisanship becomes so strong that, like all aberrations from true reason, it lands him into the midst of the most ludicrous errors. I need quote only one.

"How can you explain," asked Sir Herbert of me at Serowe, "why these natives should not have laid their complaints before the nearest British official, who is only 75 miles away, but should prefer to travel 400 miles to Johannesburg to see you?" The argument evidently appeals to Sir Herbert as unanswerable, and he repeats it in his report as a reason for doubting the truth of the accusations.

WHY TO JOHANNESBURG?

Sir Herbert is not logical. If the Ababirwas had trudged 75 miles to lay a charge at the place where such charge ought to be laid, in a well-governed country, Sir Herbert would have been prepared to trust in the genuineness of their own belief in the complaints being made by them.

I submit, on the authority of common sense, that the fact that the natives had decided to take the unnatural, unprecedented step of travelling to far-off Johannesburg to seek help from a person other than an official, should not

be interpreted as an indication that they were lying or labouring under a delusion, but as proof positive that they, at least, were convinced of the reality of their sufferings, and their strange act serves merely to raise the new question, "Why did they travel to Johannesburg?" All that apart from the fact that they had given ample proof of their bona fides by parting with 1,000 head of cattle to their attorney.

As to why they did prefer the longer journey, I can only say, as I told Sir Herbert at Serowe, that that was a question to be investigated at the inquiry.

I had occasion to say before that I regard Sir Herbert's bias as natural and inevitable. That it was quite unconscious appears from his naive disclosure, in his report, of his interview with Mr. Minchin and the receipt by him of those letters and statements.

His bias must have been unconscious, as otherwise such disclosure would argue a childish ignorance of the proprieties, which one cannot possibly associate with a gentleman of mature years and ripe experience of the world like the Special Commissioner. Sir Herbert seems to be quite unable to see anything reprehensible in having interviews with the defendants or their attorney, and in accepting from them documents prepared probably for weeks before, with the definite object of advancing their cause, all in the absence and to the exclusion of the other side.

THE INTERVIEW

When I left Serowe I was at a loss to explain the seeming discourtesy of treatment by the Special Commissioner of the attorney for the Ababirwas and his clients, but now that I have received his report, I am glad to be able to assert in this Apologia for Sir Herbert that even there he must have been actuated by the same unconscious bias.

Sir Herbert states: "Before the meeting Mr. Gluckman, who has been acting as attorney for Malema and certain other of the Mabirwa, asked for an interview"

Firstly, on a point of order: I was not acting for "certain" of the Ababirwas, but for all such as had been the guests and victims of Khama's infamous invitation.

To go on, I did not ask for an interview; Sir Herbert, on the previous evening, at Palapye Road, kindly promised me an interview at 9.45 a.m., at the magistrate's court, at Serowe, for the purpose of hearing and considering my arguments on the question of the right of the Ababirwas to legal representa-

tion. I kept my appointment, Sir Herbert was unconscious of it. He had forgotten all about his promise, had forgotten it to such an extent that he made me wait until 11 a.m. in the hot sun.

His astonishing lapse of memory reached its climax when, entirely forgetting the promised interview and his intention to hear my arguments on the subject, he finally sent Captain Hannay to inform me that he had decided not to allow me the right to represent my clients.

I was reduced to beg for the interview which Sir Herbert had promised to me and which I could claim as my right by virtue of that promise.

During the lengthy interview which followed, the Special Commissioner incidentally hinted at the doubts he entertained as to the sincerity of my protestations and as to whether he was likely to arrive at the truth if he would allow witnesses instructed by me to give evidence.

MALEMA'S CATTLE

When my search in his report for any record of the conversation between us, or for any trace of even the semblance of an apology, proved fruitless, I came to the conclusion that Sir Herbert must have been totally unconscious of having done or said anything to offend me. It must have been my sensitiveness which caused me to find fresh reason for offence in his report.

Sir Herbert has discovered that Malema had given to the law agent 1,000 head of cattle and wonders whether the native will get any change from the law agent when the account will be drawn. That public sneer is cast on me although Sir Herbert had ample opportunity to ask me for an explanation and neglected to take that opportunity, which all goes to prove how perfectly unconscious of bias Sir Herbert must have been. Why should he offend me? I had never had the pleasure of seeing or speaking to Sir Herbert before.

It seems as if Sir Herbert were observing me through the wrong end of a pair of binoculars: he even reduces me to the rank of a "law agent," in saying which Sir Herbert is obviously—to use an everyday phrase—"a bad judge."

I wonder whether Sir Herbert will read these lines and whether I shall then ultimately be paid the apology which is my due? But the Special Commissioner is probably as reluctant to part on compulsion with apologies as with reasons, and I fear that I shall

remain Sir Herbert's creditor to that extent.

A CENSORSHIP?

One passage during our interview instilled a slight doubt in my mind as to the total unconsciousness of the Special Commissioner of the bias which actuated him. He impressed on me that "Nothing must be made public without the permission of the High Commissioner." Why not? Sir Herbert must agree that it is the boast of English procedure that it courts publicity. What shame, what crime, did he anticipate would be revealed during the inquiry which it was necessary to hide in obscurity? But, in view of the other overwhelming evidence in favour of the unconsciousness of the Special Commissioner, I must interpret his words to have been a chance remark without any significance.

Did my clients receive more courteous treatment?

While I was waiting for the promised interview, I saw Khama arrive and stalk into the Residency in answer to a message sent to him that "Sir Herbert was anxious to greet him." As I looked at old Malema squatting in the dust outside the Court I was wondering how far the unconscious bias of the Special Commissioner would carry him, how he could reconcile the difference in his treatment of the litigants with the high traditions of the English Bench.

Need I again enlarge on the manner of the procedure in the Council House, and the many courtesies lavished by the Commissioner on my clients and their Chief?

Need I again refer to Sir Herbert's disquisition on the reassuring qualities of a stool? In my opinion, it would have been more becoming in the Commissioner, when Khama refused to allow Malema to sit down, to have offered his own chair to my client, in order to rebuke the discourtesy of the arrogant paramount Chief, in order to inspire my client with confidence in his impartiality, in order to do grace to the office which he occupied.

The unconscious bias which animated the Special Commissioner made him blind not only to the possibility of the existence of wrong motives in British officials, but even in the officials of another potentate, Khama. His unconscious bias led him to allow the near relative and official interpreter of Khama to act as interpreter for the court. Would it not have been more equitable to have an interpreter chosen by the Ababirwas themselves to be present, so

as to assure them, who were ignorant of the language in which the proceedings were being conducted, that nothing of importance was omitted, nor anything misrepresented, however innocently, in the body of the record to be submitted before his Royal Highness, as the source of the Special Commissioner's findings?

Immediately on the return of my witnesses from Serowe, I obtained from them a full statement of the proceedings and of the evidence taken at the inquiry.

TREATMENT OF THE WOMEN

Why is there no trace in the record of the attempt made by one of the witnesses to testify as to the violation of the Ababirwa women, nor of the answer given by the interpreter to the witness that "You must not say such things; they are unfit for white men to hear, and you will be imprisoned if you give such evidence"?

Small wonder that their statement to me differs in so many vital points from the record annexed to the report.

But why pile Pelion on Ossa? Sir Herbert, from his perusal of my letter to Mr. Blackwell of April 12, 1922, must have seen with some astonishment that I anticipated everyone of his actions: I anticipated that he would deny to my clients the right of representation; I predicted their arrest; and, finally, I prophesied the result of his findings.

I lay no claim to the gift of prophecy; the riddle was simply solved.

If Sir Herbert should ever read my reflections on the inquiry, would he then become conscious of what happened at Serowe, and when conscious, what will he do to repair the irreparable?

There fair justice was deprived of her sword, and blind prejudice usurped her seat and ruled the proceedings of an English Court, seated by the side of barbaric arrogance and hypocrisy.

CHAPTER V.

Except for his recommendation for the removal of Modisa-o-Tsile from the headship of Bobonong on the ground, I suppose, of incompatibility of temper, and his censure of Sergeant Whittlesea for apathy during the raid, the Special Commissioner finds everyone innocent, even the Ababirwas. Yet, when I concluded my study of the evidence annexed to the report, I was puzzled to understand why he did not rather commend the headman for the humane though efficient manner in which he had executed a necessary order, for all my witnesses, when faced by their benefactor, refused, in a sudden revulsion of feeling, to testify against

him. And as for the sergeant, I am again of opinion that Sir Herbert has been unnecessarily harsh, having failed to take into consideration that he was not even present at the inquiry to reply to a very weak case, and that, in any case, he was merely an officer of low rank executing, to the best of his understanding, the orders of his superior officer.

In a spirit of true economy, Sir Herbert considers grounds, no less weak, sufficient to justify his absolving from all blame the British South Africa Company, the high officials of the Protectorate, and King Khama.

These are the Commissioner's chief findings:

(1) Sir Herbert found it necessary to devote a large portion of his report to explain how the Company had become entitled to claim so prompt an evacuation by the Ababirwas of Tuli Block.

My clients at no time contended that they were anything but the tenants of the Company, but they did and do contend and complain that as tenants, as human beings, they should have received from their landlords reasonable notice to quit, an opportunity to reap their crops, a method of ejectment less efficient than by the soldiers of Modisa-o-Tsile, and, mainly, that they might have been consulted before they were handed over, body and soul, to a cruel and foreign master. Demands extortionate in moderation.

According to Sir Herbert, Chief Khama in 1895, at London, entered into an agreement with the Company ceding to it the district of Tuli Block, which agreement involved "the cession of the lands, fields and villages of Malema and his section of the Mabirwas" and implied a contractual duty on Khama to remove them, when called upon, to his Reserve.

He comes to that conclusion "after consideration of the evidence and official correspondence on the subject." I cannot say what evidence Sir Herbert may be referring to, but it is not the evidence given at the Inquiry. Sir Herbert seems to be relying on the letters from Mr. Minchin and the written statements by Khama and his witnesses.

I have been denied access to those documents. Is it not monstrous that in a civilised country, a possession of Britain, the legal representative of the complainants should be refused access to documents he had never seen and on which depends the decision of his clients' fate? If anything were required to clinch the evidence I hold testifying to the tyranny which is crushing the Ababirwas, I submit that that inexcus-

able act of the authorities would have supplied the last and missing page.

Under the circumstances I have no option but to step outside of the columns of the report, and to make use of the result of my own researches to confute the Special Commissioner.

Sir Herbert is ignorant of the true historical facts. In 1895, the shadow of impending war was straining the relations between England and the Transvaal Republic, and the Imperial Government considered it advisable to obtain from Khama and the other Bechuanaland Chiefs, then on a visit in London, a cession of a strip of country between the Limpopo and the Protectorate. Tuli Block was thus ceded not to the Company, as contended by Sir Herbert, but to the Crown. The district was then largely no-man's land, but the Bechuanaland Chiefs had a number of cattle-posts strung between Palla to Tuli, and those they undertook to recall to their own side of the line as soon as the boundaries would be marked off. The *raison d'être* for the corridor passed with the conquest of the Republic, Tuli Block became an Imperial Reserve, and such it remained until it was transferred to the Company by the High Commissioner's Proclamation, No. 13, promulgated in the Bechuanaland Protectorate on the 30th June, 1905. In its preamble the Proclamation asserts that the lands in question are vested in the High Commissioner, and only a limited ownership is transferred by the enactment to the Company; special provision is made in Section 9 that compensation should be paid for land improved by cultivation, which Section, according to the officials of the Company and the Protectorate, cannot be held to apply to my clients, for no suggestion of compensation has ever been made for the loss of the lands wrested by them from the wilderness.

In 1907 the Company decided to allot the district into farms and Khama was called on to carry out his undertaking. That he did by removing his cattle posts, thereby discharging all his contractual obligations under the agreement of 1895.

The significant facts that the Ababirwas were left undisturbed in 1907 and that, undoubtedly, the district was ceded to the Company not by any imaginary agreement of 1895 but by the Proclamation of 1905, in my opinion, cast the gravest doubts on the correctness of Sir Herbert's decision and on the purity of the sources from which he derived his information.

How can the Commissioner explain having committed so gross a blunder in

his relation of events notorious in the Protectorate? How was it that the legal experts of the Administration failed to direct his notice to the Proclamation and to prevent him from taking short cuts across the intervening years in his endeavour to trace the justification for the Company's action?

(2) In his decision on the suppositious agreement of 1895, Sir Herbert successfully begs the question whether the Ababirwas were Khama's to move at all.

My clients, for some reason, were not examined on the question of the chieftain to whom they owed their fealty, and the only evidence in the record on that point is to be found in Khama's address to the Court, where the Chief, who was neither sworn nor cross-examined, maintained that the Ababirwas, already in his grandfather's time, paid tribute and received the treatment of slaves. It never occurred to Sir Herbert that, in an ordinary Court of Law, such evidence would not have been deemed sufficient to decide the ownership of a dog, let alone of a thousand human beings.

Why did the Special Commissioner fail to apply a single one of the tests appropriate in an investigation on an issue of suzerainty?

Why was not the proud chief challenged to quote a single case within recent years in which he or his judges should have sat in judgment in an Ababirwa dispute, imposed on them a single fine, or that any order of his should have been given or obeyed in Malema's braals?

How was it that Sir Herbert neglected to seek an explanation why the brewing and drinking of beer was freely permitted in the kraals of Malema, although total prohibition is the rule in the Reserve?

How could the Chief have explained that, although conscription is strictly enforced in his dominions, none of Malema's young men served in his regiments?

It was widely known that bitter enmity had existed for years between the abstemious, puritanical Khama and the beer-drinking, heathen Malema. Why was not the Padamount Chief asked to reconcile that feud with the alleged relation of suzerain and subject?

Those were the true and simple tests of the overlordship of Khama, and those, although obvious, the Commissioner has failed to apply.

Sir Herbert realises the weakness of the case and seeks corroboration in a

paragraph of a letter by Mr. Fairfield, the Permanent Under-Secretary of State—Sir Herbert should note, an Imperial, not a Company official—to Khama and the other Chiefs, dated 18th November, 1895, but quite forgets to prove the relevancy of the paragraph to the matter in issue:

“Lastly some of the people who now ‘Konza’ to you have their kraals in the strip of country which will be cut off from your chieftainship for the railway strip. These you will recall to your own side of the line when it is marked off. Major Goold-Adams, who is gone to your country to do that work, knows all about this and will report about the people moving. They will be allowed to remain to reap their crops and will take their cattle with them when they trek.”

Sir Herbert is again reduced to the ignominious process of petitioning the question.

How does the Commissioner know that by “some of the people who now ‘Konza’ to you” were meant the Ababirwas? or that Khama, of the three Chiefs, was the Chief meant? Even when satisfied on those points, there still rested the duty on the Commissioner to decide that the people who were alleged to “Konza” did in fact “Konza.” There is no evidence on those points in the record, and Mr. Fairfield’s letter was not intended to be a judicial decision, but a mere statement of facts, supplied to him, most probably, by Khama himself.

Sir Herbert states: “It is probable that Malema and the Mabiwa never heard of this arrangement, or if they had would not have realised how seriously it would affect them in the future,” also: “The information I have been able to obtain all points to the fact that the Mabiwa as a tribe are separate and distinct from the Bamangwato.”

In the face of those statements, is it fair of Sir Herbert to bolster up his decision by the technical argument that the hut-tax which the Ababirwas were paying to the Administration was collected in the name of Khama? Mind, I do not admit even that, for the receipts I have seen do not mention Khama’s name.

Sir Herbert is too economical to waste even any old argument. Can it be fairly argued that my clients had waived their freedom, their individuality as a tribe, by accepting printed receipts they could not read, and the awful, legal significance of which would in any case have been hidden from them?

(3) According to Sir Herbert the Ababirwas were the tenants-at-will of

the British South Africa Company. In view of the fact that the Ababirwas were not given an opportunity to reap their crops, and were ejected practically without notice and before the expiration of the period for which they had paid rent, I can recognise the necessity for the finding, but, unfortunately for Sir Herbert, there is not a shred of evidence to bear out his decision either in the record annexed to the report or in those mysterious documents, in so far as one can judge from the references made to them by Sir Herbert.

The Commissioner is relying on the agreement of 1895, but there was no such agreement.

The Commissioner is relying on the paragraph quoted from Mr. Fairfield’s letter, but Mr. Fairfield does not say that “the people who ‘Konza’” were to be tenants-at-will; on the contrary, he states “they will be allowed to remain to reap their crops,” which certainly implies a period of notice. It is obvious that, in 1895, Mr. Fairfield contemplated that the natives referred to by him were to be moved within a short time, as can be seen from the references to Major Goold-Adams; twenty-five years had been allowed to pass since, and the very reason for their removal had ceased to exist after a generation.

It is common cause that the contract between the Company and the Ababirwas was one of letting and hiring, the Roman-Dutch Law governed that contract, and the Company committed a breach of that contract by ejecting its tenants without reasonable notice.

(4) Here Sir Herbert is faced with another difficulty, the fact that my clients were ejected on the 24th December, 1920, although they had paid rentals until the end of that year.

But why are difficulties raised except to be surmounted? The manner in which the Commissioner leaps over the obstacle is both characteristic and highly entertaining.

Sir Herbert states: “The Company wished the Mabiwa to move by the 30th November, 1920, and I understand the rents they had paid covered the period ending on that date. Captain Garbutt in his Minutes says the period ended the 31st December, 1920, but I believe this is a mistake. In any case the question was not raised either at the meeting at Serowe or elsewhere.”

Naturally, no evidence was given at the inquiry to guide the Commissioner. True, receipts were produced by the Ababirwas which stated that they had

paid their rentals to the agent of the Company until the end of 1920, but those the Commissioner evidently disregarded as irrelevant and of no importance, and refused to allow them to affect his judgment.

There is even no indication that the Commissioner obtained evidence contradicting those receipts in the mysterious documents; on the contrary, some minute by Captain Garbutt substantiates the truth of their story, but Sir Herbert, inspired evidently by his inner knowledge, prefers not to believe the mysterious documents on that point.

Sir Herbert must be mistaken in his statement that the question had not been raised at Serowe; it must have been raised to make it necessary for him to frame his amusing reply. And as for its not having been raised elsewhere, Sir Herbert is again mistaken; it formed one of my complaints to the High Commissioner. Not only that, the argument is highly technical and rather unfair; if Sir Herbert had not made it necessary for me to efface myself from the inquiry, if he had only arrested me together with my witnesses, he need have no doubt whatsoever that the question would have been raised in the plainest of terms.

(5) On the question of the destruction and looting of property, the Special Commissioner states: "With the exception of the claim for £1,600, which is unsupported by evidence, there remain, according to the evidence, outstanding claims for approximately 30 cattle killed, 22 bags of grain destroyed, 4 karosses burnt, five pigs killed, and four guns and one plough missing."

I regret to be compelled to state that the Commissioner's decision does not prove the insignificance of my client's losses, but does prove that he is shortsighted in mental comprehension.

It is admitted that one thousand sufferers were involved in the raid, and that Sir Herbert had thirty of that number before him. By what process of reasoning did he come to the conclusion that he had heard the evidence as to all the losses? There is nothing in the record to justify that attitude. He had not yet heard the evidence of the other nine hundred and seventy witnesses. It is a fair contention, by the law of averages, that, if he had multiplied the ridiculous list compiled by him by thirty, he would have come much nearer the mark.

But I am beginning to realise that my arguments will not convince Sir Herbert. His imagination seems to have been un-

able to carry him beyond the stupendous figure of King Khama and his amphitheatre of soldiers and subjects.

I submit, in all seriousness, I am perfectly fair to the Commissioner. No better illustration is required for my object than his decision on the £1,640 which Malema claimed had been dug out of the floor of his hut during the raid.

How does the Commissioner come to the conclusion that Malema's claim was uncorroborated by evidence? In my opinion, it is corroborated by very strong evidence.

According to the record it was admitted at the inquiry that, during the raid, the floor of Malema's hut was dug up in search for treasure, and that a tin containing money was abstracted. There is that admission, the evidence by Malema that it contained £1,640, the fact that it represented the savings of the lifetime of an aged Chief, and, according to Malema, he could bring his brother to corroborate his statement. Surely that ought to have been sufficient to throw the onus on the raiders to clearly prove who dug up the floor, how much treasure was discovered, and why it has not been returned to the owner? Sir Herbert states that £40 was returned at Bobonong to Malema's daughter, and fails to see that the payment only serves to further corroborate Malema's version. Is it likely that the thieves who had no compunction to commit a theft would have the compunction to return the whole of the treasure found?

Sir Herbert evidently expected Malema to bring about 20 witnesses to prove the existence of his secret hoard. If Malema had shared his secret with 20 witnesses, I do not think that he would have had any cause to complain of his loss before the Commissioner.

But Sir Herbert himself is not satisfied with the thoroughness of his investigation in the losses of property. I can sympathise with the Commissioner; investigation of that nature was likely to prove long and tedious; I can justify his impatience, but nothing in the world could justify his recommendation that he be released from his duties and be authorised to delegate his powers of enquiry to the arch-defendant, Khama himself. I feel sure that such a thought is unprecedented in the annals of civilised, legal investigation.

I, as the representative of the Ababir-was, state that I utterly abhor and deny Khama as the judge in my clients' cause; I should much sooner prefer Sir Herbert.

(6) Much of what I said in argument on the question of the destruction of property is applicable in reply to Sir Herbert's finding that some atrocities had been committed, some physical violence suffered, but nothing to make any great outcry about.

Seeing that Mr. MacGregor, in an official inquiry, has been able to find no evidence of violence and reported that the natives, on the contrary, were living in a state of idyllic happiness, seeing that Sir Herbert, in an inquiry which bristles with many most unsatisfactory features, has been able to find some evidence of violence, I submit that in an enquiry conducted under equitable circumstances, my clients will be able to prove clearly that their allegations of torture and slavery are justified.

(7) It had been reported to the High Commissioner that twenty-five of the Ababirwas had died during the fourteen months.

Sir Herbert states: "If twenty-five deaths occurred during that period among a thousand people (which is approximately the number affected by the removal), it seems a high rate of mortality."

How high would Sir Herbert have regarded the rate of mortality if he had known that out of the original thousand people, only about two hundred and fifty remained at Bobonong, the rest having dispersed to Rhodesia, the Transvaal and other points of the compass? What term, seeing that "high" was no longer applicable, would he apply to so high a rate? What explanation could be given for so large a number of deaths? We must bear in mind that we are dealing with natives who are able, fortunately, to stand greater privations than white men.

I believe that I have dealt with all the main points decided on by the Special Commissioner, and trust that I have succeeded in proving the eternal truth of the glorious reply by Papinian to Neracalla: "It is easier to commit than to justify an act of violence."

I have been greatly handicapped by the absence of the documents referred to in the report and by the ridiculous manner in which the evidence had been taken, which makes it haphazard, contradictory, hearsay and irrelevant.

I have come to the conclusion that the officials of the Administration are labouring under a great error. It is not Khama who is the autocrat of Bechuanaland, but King George V. By the Order in Council of 1891, Queen Victoria assumed for herself and her descendants the absolute rule and the responsibility for good government of the Bechuanaland Protector-

ate, and the chiefs of that territory were reduced to the level of petty feudatories. By retaining that principle in theory, but reversing it in practice, we run the risk of besmirching the fair fame of England and its Sovereign.

To the Editor, "Rand Daily Mail."

Sir,—As attorneys of the Chief Khama we have no intention of going into the merits of the claim of Malima and his followers, which is receiving so much publicity at the present time in the columns of your paper. This matter is under the consideration of His Royal Highness the High Commissioner and professional etiquette makes it undesirable for us to discuss a matter which is still sub judice. We further trust that we shall not be credited with any desire for self-advertisement if we follow the example of your correspondent Mr. Gluckmann in claiming a hearing in your paper. We leave Mr. Gluckmann's action and our own to the judgment of your readers and of the profession to which we as well as Mr. Gluckmann belong.

In fairness, however, to the Bechuanaland Protectorate Administration, in whose Courts we are admitted as practitioners, we cannot allow Mr. Gluckmann's version of a fact that came within our own knowledge, to pass unchallenged.

We pass over, therefore, the mass of debatable matter which Mr. Gluckmann places before your readers as facts and the question of the jurisdiction of the local Courts to deal with his client's claim, and come to Mr. Gluckmann's statement in the second instalment of his letter to you to the effect that a summons was issued in the Court of the Assistant Commissioner, which was duly served on both defendants (Chief Khama and Modisa-a-Tsile) and that "up to now no plea has been served in reply."

As attorneys of the two defendants, we state that no summons was issued or served and therefore there has been no necessity to file a plea. We understand that a summons was tendered by Mr. Gluckmann's local agent to the Clerk of the Court at Francistown but the question of issue was referred to the Resident Commissioner and before a decision was come to the claim for the issue of the summons was withdrawn.

The point is a small one but the matter is, or should have been, within the personal knowledge of Mr. Gluckmann, and the inaccurate version raises a question as to the accuracy of many other statements in his letter which are so confidently set forth.

We further consider it only fair to our client to state that Malima's claim has grown at such a rate that we have found difficulty in keeping pace with it, and no doubt the Administration have experienced the same difficulty. Thus in Mr. Gluckmann's letter of October 14, 1921, to the High Commissioner, in which he set forth Malima's claim and asked for the appointment of a Special Court, there is no mention of a loss of £1,600 in money or of any money, or of the rape or torture of his clients.

The claim for the £1,600 looted fired appeared some months afterwards, when a summons was tendered in the Court of the Assistant Commissioner and the allegation of rape and torture is only heard of after the close of the sitting of the Special Commissioner at Serowe.

As rape and torture are serious criminal offences, we would have thought that if they were verifiable they would have formed the forefront of the charges brought against the regiments of Chief Khama and not have been brought in as a side issue some fifteen months after the alleged event.

Mr. Gluckmann, in one of his letters to the Chief Khama, described himself as a second Moses setting out to deliver his people (the Mabitwa) from the cruel hands of a second Pharaoh. If we are to accept Mr. Gluckmann's claim seriously we may take his contribution to your columns as the first of "the plagues of Egypt" by which the deliverance of his people is to be effected. We wait with interest for the remainder.—We are, etc.,

MINCHIN AND KELLY

Mafeking, May 12.

(To the Editor "Rand Daily Mail.")

Sir,—In your issue of to-day's date, there appeared a letter from Khama's attorneys casting doubt, ridicule and discredit on myself and my report of the Ababirwa scandal.

I recognise it as an attempt to prejudice against my clients their only judge, the public, and to scotch in its birth any future impartial inquiry which the protest of your indignant readers may bring about.

Sneers, however, cannot kill facts, and the letter of Messrs. Minchin and Kelly will bear as little investigation as the summary of the report by Sir Herbert Sloley which was published in your issue of yesterday's date.

Your correspondents accuse me of a serious breach of professional etiquette in that I made public a cause which was still sub judice.

THE COURTS CLOSED

I have been a member of an honourable profession for fifteen years, and this is the first time that I have been accused of infringing its written or unwritten laws, but, even if I can be accused of a technical breach of the rules of etiquette, your correspondents must agree with me that the claims of humanity, the rules of justice, must prevail over the laws of etiquette.

I had no alternative; the Courts of the Protectorate were closed to me; the Resident Commissioner, who is the representative of the High Commissioner at Mafeking, in the Protectorate, after corresponding with me for months, suddenly awoke to the fact that I had no legal status in the Protectorate and refused to recognise me.

The inquiry at Serowe under the circumstances in which it had been held was worthless, and I could anticipate only one result, which, as a matter of fact, I had already predicted, in your issue of April 28, 1922, the white-washing of Khama; the very heads of the High Commissioner's Department in Capetown, they who were to pronounce judgment on my clients' cause, showed by their refusal to allow my clients' legal representation at the inquiry, in spite of the provisions of the law, an obvious bias against my clients, and intimated to me plainly that the topic of the Ababirwas was distasteful to them, and that the correspondence on the subject must cease.

Your correspondents go on to accuse me of ignoble motives; my appearance in print is said to be due to a desire for self-advertisement. I have been in this country for 30 years, in Johannesburg for a matter of 20 years; during the whole of the time I had never made an appearance in public nor ever written a line in a matter of public interest except once, when, in a fit of mild frenzy, I wrote a short letter to a newspaper. It is a desire which, unbeknown to me, must have been born suddenly and most recently, as I have never suspected its existence before, and Messrs. Minchin and Kelly show remarkable acumen and great daring in discovering it. But what can I gain by this advertisement? The sight of one man fighting against overwhelming odds was not likely to gain an access to my practice; I could have done much better by acting on the suggestion which

had previously been made to me by the Administration to sell my cattle to Khama at a price more fair than I could obtain in the open market and inducing Malema to drop his case.

Messrs. Minchin and Kelly had been my correspondents for a number of years and should know me better, but I fully realise that they are not so much to blame: "The hands are the hands of Esau, but the voice is the voice of Jacob."

Messrs. Minchin and Kelly go on to accuse me of misrepresenting the actual facts.

THE SUMMONS

The summons against Khama and Modisa-o-Tsile was sent by me to my Mafeking correspondent, Mr. Rice, on the 5th January, 1922. On the 7th of that month, Mr. Rice wrote to me:—

"I am in receipt of your letter of the 5th instant, enclosing draft summons and power for which I thank you.

"This matter will be heard in the Court of the Assistant Commissioner for the Northern Protectorate and summons will be issued at Francistown as Serowe, where defendants are, is in the Northern Protectorate.

"I am writing to the Assistant Commissioner with a view to the case being heard at Serowe, as this will save a considerable amount in witnesses's expenses, instead of Francistown, as the action cannot be heard at Mafeking; it may, however, be arranged, and this depends on the Assistant Commissioner, that the action be removed to the Court of the Resident Commissioner, in which case it would be heard at Mafeking; of this I will advise you later, but in the meantime summons will have to be issued at Francistown.

"Messrs. Minchin and Kelly, defendants' Attorneys, inform me that they will also write to the Assistant Commissioner regarding the hearing at Serowe, to which they are agreeable, especially in view of the attitude being taken up by Khama, whose dignity apparently has been hurt owing to the insult offered by some one daring to sue him, that he will not give his evidence anywhere else than Serowe, and should the venue be Francistown or elsewhere he has instructed his Attorneys to apply for a commission to hear his evidence at Serowe: I informed them that such an application would be

strenuously opposed as Khama is well and able to travel, and they are not keen on making futile applications.

"As soon as I receive the plea I will forward same to you."

On the 20th of that month I received a letter from him in which he stated, *inter alia*, "In this matter at the request of the Resident Commissioner I called upon him this morning, when he stated that in his capacity as Resident Commissioner he had to report to the High Commissioner for the Bechuanaland Protectorate the fact that the proceedings in this case had commenced;" he then goes on to explain the unexampled suggestion which was being made by that judge of appeal that security might be demanded from the plaintiff.

I subsequently interviewed Mr. Rice on my journey to Palapye Road in January, 1922, when the question of the pending action was again discussed, and I certainly understood from him that he was expecting the receipt of the plea within the course of a few days. When at Palapye Road I discovered the falsity of the report sent by Captain Nettleton in October, 1921, and, shocked at the means adopted by Khama's adherents to suppress the true facts and despairing to obtain justice at the hands of the officials of the administration, Mr. Rice and I decided to postpone the case pending the result of a further appeal to the High Commissioner for the appointment of a Special Court.

WHY NOT ISSUED?

Again, when writing to the High Commissioner in February, 1922, begging for the appointment of an impartial tribunal, I placed on record the fact that a summons had been issued, but that no plea had yet been received, which allegation was at no time denied by the authorities. The summons has never been withdrawn, and when I was last at Mafeking during April I again discussed with Mr. Rice the advisability of calling upon Khama's representatives to file their plea. Your correspondents allege that the summons had never been served. I can only say that I was certainly under the conviction that service of process had been effected, and the fact that the summons had not been served can be considered as only another of the expedients employed to thwart the case of the Ababirwas.

Mr. Advocate Blackwell informed me a few days ago that, when he last interviewed the Imperial Secretary's office at Capetown he was informed that I should

not be allowed to go on with the action which had been instituted against Khama and Modisa-o-Tsile without the special leave of the High Commissioner.

There can be no doubt that the summons had been handed to the Clerk of the Court; such summons had been issued by the special leave of the High Commissioner. Why has the summons not been served? Where was the necessity for referring the question of issue to the Resident Commissioner? I am in the fortunate position to be able to produce witnesses or chapter and verse for whatever I allege, and I assert that your correspondents have acted unfairly against me in raising accusations of falsity on that ground. The summons should have been served, and it had not been served owing to some cause best known to the Clerk of the Court at Francistown and the Court of the Resident Commissioner at Mafeking.

I should be glad if your correspondents and the reading public would bear in mind that, as an attorney of fifteen years' standing, and as a Bachelor of Laws of the University at Capetown, I ought to know at least the elementary principles of the laws of libel and the serious consequences which may result from any ill-founded accusation. When I requested you to publish my report I did so with the full knowledge of the risk which I was running, and unfortunately for your correspondents and the clients whom they represent I am in a position to produce the goods, and have been only waiting for an opportunity for the last eight months to display them on a clean and well-lit counter, but that opportunity is being deliberately denied to me.

Your correspondents choose, in a face-tious manner, to throw doubts on my accusations of rape and robbery. Your correspondents must bear in mind that there are some things which are too serious for levity; I mean the violation of the women and the enslaving of the tribe of the Ababirwas.

It may be news to your correspondents that I received a letter from Palapye Road last Friday in which they advised me that on the previous Sunday, at Bobonong, Chief Malema's daughter, while lying sick in a hut, was repeatedly assaulted and violated by two of Khama's soldiers. I wish to add that the full circumstances of the rape and the names of the perpetrators were sent by me that very day to the Imperial Secretary, and I received a wire from him yesterday assuring me that the matter would be investigated.

I wish to remind your correspondents that this is a case dealing not with any legal quibbles, but with the fundamental rights of humanity.

The loss by Malema of £1,600 had not been mentioned in my letter to the High Commissioner of October 14, 1921, as it was my intention to make my petition to the High Commissioner short and succinct; my letter contained a general summary of the position and not a list of grievances; it was not a summons stating the specific claims, but a petition for a special court to enable me to issue such a summons. The rape and the torture of my clients had not been referred to before, as I had not had an opportunity of actually interviewing and obtaining the statements from the victims or the perpetrators of those crimes, and I knew only too well the insidious and unscrupulous foes I had to deal with before I ventured to make any public statements without having ample proof.

I had already been threatened by an action by Captain Nettleton for libel, and welcomed it; why has that action never been instituted?

I have libelled, and am now libelling, Khama, his adherents and the Administration; why has no action for libel been issued against me? I should welcome nothing so much as that action; it would at least ensure me a fair trial before an impartial judge of our courts; but I know that my hopes are vain; there will be no action. They dare not face an action, as it would involve an investigation by an arbiter who cannot be influenced, and their ultimate destruction.

I am then accused of the extreme folly of parading in the robes of a second Moses. I fear that there is little resemblance between that legendary hero and myself; I am merely a man who places humanity above a legal fee or the fear of persecution. What actually happened was that, on the eve of my departure from Palapye Road, I thought it advisable to again approach Khama for an amicable settlement, and wrote to him a letter couched in the most conciliatory and flattering terms. I could have prayed to the devil to get justice for the Ababirwas.

After using a number of arguments to the chief to prove the advisability of a settlement, I argued on the inadvisability of a refusal, and in my arguments I could not help referring to the expression of contempt which had been used by the chief—I suppose by way of encouragement to my witnesses—to my clients at

Serowe, when he described himself as a great chief and referred to me as an insignificant Jew. I could not very well go forward, for the understanding of a rascally monarch, illustrations drawn from Greek or Roman history; I had to say that he was a Christian, and I wrote: "You are a great chief, but Pharaoh was much greater; Pharaoh lost and was smitten with ten plagues because Moses had God on his side, and you will lose if you are in the wrong. I say to you like Moses: Let these people go. You cannot win an unjust cause, particularly with unjust means. You made a mistake when you allowed me to leave and left the Ababirwas without a defender; you should have insisted on remaining and conducting their defence. When I turned my back on Serowe, the cause was lost."

My evil and foolish interpretation can be read even into the lines written by those who seek for a fair Imperial Secretary read the report to refuse representation in a public meeting made no reference to it.

To conclude my reflections on the respondents' letter by quoting: "Voilà qui mal y pense."

THE SLOLEY REPORT

I wish to make no comment on the summary of Sir Herbert Sloley's report which appeared in your issue of yesterday's date, as I am awaiting the receipt of a full report, when it is my intention to convene a public meeting at which I propose to go into the report more fully, and to which I shall challenge Khama and all his adherents to appear and answer the many serious charges which I am making against them. I only wish

to say that it is unheard of, at least in my experience, that a high official, specially chosen to investigate the allegations of depredations of property which were being made against Khama, his son-in-law and their followers, should so far forget his duties as to think it proper to delegate his powers of inquiry to one of the accused, Khama himself.

The Proclamation reads: "The special commissioner is required to inquire into and report upon the circumstances connected with and attending the removal in 1920 and 1921 of certain Mabitwa, Malema Makhura and his followers and their families and possessions from the Tuli Block . . . and particularly any loss of property . . . whether suffered by them at the time of or in connection with such removal, and, if so, the nature, extent of such loss, and how such loss was occasioned."

According to the summary the special commissioner stated "that Chief Khama gave me his assurance that if the matters of the cattle killed, property and grain destroyed or looted were remitted to him, he would fully and impartially inquire into each complaint and see that restitution was made." Is that the explanation why the inquiry took only two days and an hour or so?

Under the Proclamation which appointed him he had no rights of delegation at all, but to delegate his powers to the chief of the tribe who were the defendants in the inquiry is, as I said before, an action which could only be described as unprecedented and unheard of.

I am, etc.,

May 16.

E. GLUCKMANN.

UNIVERSITY OF CALIFORNIA LIBRARY

Los Angeles

This book is DUE on the last date stamped below.

ader
th a
amen

had r
pe Hi
, as
7 pe
r sho
ned
and r
a su
but
ble s
pe a
t be
had a
ng a
victi
s, an
s an
wit
publ
proof
by a
libe
actio

lline
mini-
libe
we
n; i
via
s

41584

UC SOUTHERN REGIONAL LIBRARY FACILITY



AA 001 106 843 4

